

Appendix B – Overview of Related Laws

Benefit of Persons of Low and Moderate Income

SECTION 104(b)(3) OF TITLE I OF THE HOUSING AND DEVELOPMENT ACT OF 1974 (as amended)

The Federal Act
42 USC 5301 et
seq.

Explanation/Intent

The use of funds must be developed to give maximum feasible priority to those activities which will benefit low and moderate income families, or aid in the prevention or elimination of slums or blight or meet other community development needs having a particular urgency.

Sanctions for Non-Performance

The Secretary of HUD, after a finding of non-compliance, shall:

- terminate payments, or
- reduce payments, or
- limit the availability of other funds under this Title, or
- refer case to Attorney General for civil action.

Labor

DAVIS-BACON ACT

40 USC 276a et
seq.

Explanation/Intent

Requires that workers receive no less than the prevailing wages being paid for similar work in their locality. Prevailing wages are computed by the wage decisions for each classification of work. Prevailing wage rates are determined by the Department of Labor.

The wage rate provisions of the Davis-Bacon Law apply to all VCDP-funded construction contracts over \$2,000, except those for rehabilitation of a residential structure that will contain less than eight units when completed.

Under Davis-Bacon, contractors can pay workers no less than the prevailing wage for a given category of work.

It is the grantee's job to request a **current** prevailing rate decision covering all categories needed.

Sanctions for Non-Performance

Failure to comply with Davis-Bacon provisions can lead to the termination of a contractor's right to proceed with a contract, prohibition from participation in future federal contracts, and/or legal actions at the State or Federal levels.

FAIR LABOR STANDARDS ACT

Explanation/Intent

Establishes standards for minimum wage, maximum hours, and child labor.

Sanctions for Non-Performance

Penalties include fines and/or prison terms for willful violations.

CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Explanation/Intent

Requires that workers receive "overtime" compensation at a rate of 1-½ times their regular hourly wage after they have worked 40 hours in one week. It applies to all construction contracts issued under the Vermont Community Development Program (VCDP).

Sanctions for Non-Performance

A contractor violating these provisions will be guilty of a misdemeanor and upon conviction can be punished with a fine or prison term, or both.

COPELAND ANTI-KICKBACK

Explanation/Intent

Requires that workers be paid at least once a week, and without any deductions or rebates except permissible deductions. Permissible deductions include taxes, deductions the worker authorizes in writing, and those required by court processes. The Act also requires contractors to maintain payroll records and submit certified weekly statements of payrolls to the contracting agency. It applies to all contracts covered by Davis-Bacon.

Sanction for Non-Performance

Conviction of forcing an employee to give up compensation to which he is entitled under his contract of employment can lead to fines, imprisonment, or both.

29 USC 201 et seq.

40 USC 327-333

**18 USC 874 And
40 USC 276c**

EQUAL EMPLOYMENT OPPORTUNITY EXECUTIVE ORDERS

Explanation/Intent

Executive Order 11246 as amended by Executive Order 12086 requires that all contractors agree not to discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The law requires that all contractors being paid with federal funds take affirmative action to ensure that applicants are employed without regard to their race, color, religion, sex, or national origin. The contractor (community) shall conspicuously post notices (to be provided by the Agency) declaring this policy.

Sanctions for Non-Performance

Noncompliance can lead to cancellation of the contract, ineligibility for further Government contracts, or referral to the Department of Justice for appropriate action.

SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 and REGULATIONS at 24 CFR 135

Explanation/Intent

In administering the VCDP, grantees are required, to the greatest extent possible, to offer employment opportunities to lower income persons living within the county in which the activity is taking place. Whenever possible, contracts are also to be awarded to local firms, women-owned and minority businesses.

Sanctions for Non-Performance

Failure or refusal to comply may lead to any or all of the following: cancellation, termination, or suspension in whole or in part of the contract or agreement; a determination of ineligibility or debarment from any further assistance or contracts under the program with respect to which the failure or refusal occurred until satisfactory assurance of further compliance has been received, and referral to the Department of Justice for appropriate legal proceedings.

**24 CFR 130 And
41 CFR 60**

**12 USC 1701u
And 24 CFR 135**

Environmental and Historic

42 USC 4321 et seq.

**NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) OF 1969 as amended
(See regulation at 24 CFR part 58)**

Explanation/Intent

NEPA establishes national policy, goals, and procedures for protecting, restoring, and enhancing environmental quality. The intent of the Act is to help public officials make effective decisions about the potential effect of proposed projects on the environment. The grantee must certify that the proposed project will not significantly impact the environment and that the grantee has complied with environmental regulations and fulfilled obligations to give public notice of the funding request, environmental findings, and compliance performance.

Sanctions for Non-Performance

In signing this assurance, the chief executive officer of the grantee assumes the status of a responsible Federal official under NEPA and accepts the jurisdiction of the Federal Courts for the purposes of enforcement of the responsibilities of the Act. VCDP funds can be withheld until provisions of this Act are met.

EPA LIST OF VIOLATION FACILITIES

Explanation/Intent

Grantee will insure that the facilities under its ownership, lease, or facilities supervision which shall be utilized in the accomplishment of the program are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

SECTION 106 OF HISTORIC PRESERVATION ACT

16 USC 470

Explanation/Intent

Requires that all applicants obtain a written comment from the Vermont Division for Historic Preservation on the potential impact to historic and archeological properties of a Vermont Community Development project. If there are concerns regarding potentially adverse impacts to properties listed in, or eligible for, inclusion in the National Register of Historic Places, the Division will explain these concerns and recommend steps that need to be taken. (Further discussion of this law appears at the end of this summary, beginning on page B-15).

EXECUTIVE ORDER 11593 (PROTECTION AND ENHANCEMENT OF CULTURAL ENVIRONMENT)

Explanation/Intent

Requires that projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archeological significance.

PRESERVATION OF ARCHEOLOGICAL AND HISTORIC DATA ACT OF 1974

16 USC 469 et seq.

Explanation/Intent

Provides for preservation of historic and archeological data that might otherwise be lost as a result of flooding, building of access road and other alterations caused by construction of a dam by any agency of the United States, or any federal construction project.

PROCEDURES PRESCRIBED BY THE ADVISORY COUNCIL ON HISTORIC PRESERVATION found at 36 CFR 800

36 CFR 800

Explanation/Intent

Describes the method by which one shall comply with the National Historic Preservation Act.

EXECUTIVE ORDER 11990 PROTECTION OF WETLANDS

Explanation/Intent

Requires that the grantee shall avoid undertaking or providing assistance for new construction located in wetlands unless there is no practical alternative to such construction and the proposed action includes all practical measures to minimize harm to wetlands which may result from such use.

Sanctions for Non-Performance

Violations may result in civil penalties.

ENDANGERED SPECIES ACT OF 1973

**16 USC 153 et seq.,
And 10 VSA 4046
And Chapter 123**

Explanation/Intent

Grantees must consult with the Vermont Agency of Environmental Conservation to ensure that a proposed activity will not jeopardize the confirmed existence of an endangered or threatened species or result in the destruction or adverse modification of habitat critical to threatened animal or plant life.

Sanctions for Non-Performance

Violation can result in fines up to \$1,000.

THE FISH AND WILDLIFE COORDINATION ACT OF 1958

Explanation/Intent

Applies to impoundment of water covering ten or more acres or modifying any body of water. Adequate provision must be made for the conservation, maintenance, and management of wildlife resources.

Sanctions for Non-Performance

Violation of rules or regulations relating to this Act is a misdemeanor. Conviction can result in a fine, prison term, or both.

VERMONT FRAGILE AREAS REGISTER

Explanation/Intent

Grantees, before making capital improvements funded in whole or part by federal money, must attach a statement of the capital improvement's impact on any affected fragile areas. This register is available from the Agency of Environmental Conservation.

THE SAFE DRINKING WATER ACT OF 1974 as amended

Explanation/Intent

Grantees must review activities to assure that aquifers which are a sole or principal source of drinking water are protected.

THE CLEAN AIR ACT as amended and VERMONT LAW REGARDING AIR QUALITY STANDARDS

Explanation/Intent

Grantees must consult with the Agency of Environmental Conservation to insure compliance with the Vermont State Implementation Plan (SIP) that

16 USC 661 et seq.

10 VSA 6551

**21 USC 349, And
42 USC 210 And
300f et seq.**

**42 USC 7401 et seq.
And 10 VSA 551 et seq.**

specifies the manner in which national primary and secondary ambient air quality standards are to be maintained within each air quality zone in Vermont. The SIP requires preconstruction review for any "new source" of pollution.

Sanctions for Non-Performance

The Secretary of the Agency of Environmental Conservation may issue an order that necessary corrective action be taken. Penalties can include a fine up to \$2,000.

EXECUTIVE ORDER 12088 relating to prevention, control and abatement of water pollution and the FEDERAL WATER POLLUTION CONTROL ACT OF 1972, as amended (VERMONT LAW 10 VSA 1251 et seq. and 18 VSA 102, 1203, and 1218).

33 USC 1251 et seq.

Explanation/Intent

Requires that the head of each Agency is responsible for ensuring that all necessary actions for prevention, control, and abatement of water pollution with respect to federal facilities and activities under control of the Agency.

Sanctions for Non-Performance

Violators of Subchapter 1, Chapter 47 of Title 10 VSA (Water Pollution Control) may be fined up to \$25,000 and imprisoned not more than 6 months.

EXECUTIVE ORDER 11988, as amended - FLOODPLAIN MANAGEMENT [also, 42 USC 4001 et seq. and VERMONT LAW (10 VSA 751 and EXECUTIVE ORDER 17, of 1978)].

42 USC 4001 et seq.

Explanation/Intent

Grantee must avoid floodplain development wherever there is a practical alternative. If there is no practical alternative, the grantee must, prior to taking any action:

- design or modify its actions in order to minimize a potential harm to the floodplain; and
- prepare and circulate a notice containing an explanation of why the action is proposed to be located in a floodplain.

SOLID WASTE DISPOSAL ACT as amended by the RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 and amendments and VERMONT LAW and amendments [24 VSA 2202A].

42 USC 6901 et seq.

Explanation/Intent

Requires disposal of solid waste in accordance with federal and state laws; that is, in approved sanitary landfills.

Sanctions for Non-Performance

Municipalities violating this Act may be fined \$100 for each violation.

HUD ENVIRONMENTAL CRITERIA AND STANDARDS (24 CFR 51)

Explanation/Intent

Prohibits HUD support for most new construction of noise-sensitive uses on sites having unacceptable noise exposure.

Architecture and Construction

TITLE IV OF THE LEAD-BASED PAINT POISONING PREVENTION ACT et seq. amendments

42 USC 4803(b)

Explanation/Intent

Section 401(b) of the Lead-Based Poisoning Prevention Act (42 U.S.C. 4831(b) directs the Secretary of HUD to prohibit the use of lead-based paint in residential structures constructed or rehabilitated with federal assistance. (See regulations at 24 CFR Part 35 Subpart B.)

42 USC 4151

Sanctions for Non-Performance

Local governmental units are responsible for lead-based hazard inspection.

ARCHITECTURAL BARRIERS ACT OF 1968

29 USC 794

Explanation/Intent

HUD issues standards to insure whenever possible that physically handicapped persons will have ready access to and use of public buildings.

SECTION 504 OF THE REHABILITATION ACT OF 1973 as amended

Explanation/Intent

No otherwise qualified handicapped individual shall, because of his

handicap, be discriminated against under any program or activity receiving Federal financial assistance.

Sanctions for Non-Performance

Termination or refusal to grant or continue Federal financial assistance.

Relocation and Acquisition

TITLE I OF THE COMMUNITY DEVELOPMENT ACT OF 1974, as amended.

42 USC 4601

Explanation/Intent

Grantees must minimize displacement which might result from activities supported with these funds and each grantee receiving funds for all activities other than Planning Grants must develop and adopt an anti-displacement plan. [See Federal Regulation at 24 CFR 570.606(b)].

Sanctions for Non-Performance

The Secretary of HUD, after a finding of non-compliance, shall:

- terminate payments, or
- reduce payments, or
- limit the availability of other funds under this Title, or
- Refer case to the Attorney General for civil action.

SECTION 104(b)(5) OF TITLE I OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974, as amended.

Explanation/Intent

Restricts recovery of capital costs by assessing any amount against properties owned and/or occupied by persons with lower income.

Sanctions for Non-Performance

The Secretary of HUD, after a finding of non-compliance shall:

- terminate payments, or
- reduce payments, or
- limit the availability of other funds under this Title, or

- refer case to the Attorney General for civil action.

URA (1) THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (URA) (42. U.S.C. 4601) and HUD IMPLEMENTING REGULATIONS AT 49 CFR PART 24 apply to the acquisition of Real Property by a State Agency for any activity assisted by this part, and to the displacement of any family, individual, business, nonprofit organization or farm that results from such acquisition. The grantees Cert. of Compliance with the URA is required in the Grant Agreement. (See 24 CFR part 570.606)

Explanation/Intent

A statement of what Congress perceives to be the preferred method of dealing with landowners when the government wants to acquire their land. Establishes uniform policy for the fair and equitable treatment of persons displaced as a result of federally assisted programs. Establishes compensation levels for moving expenses and loss of tangible personal property as well as guidelines for the provision of replacement housing.

Sanctions for Non-Performance

Grant will not be awarded unless grantee assures that the guidelines for land acquisition will be followed to the greatest extent practicable under State law.

Equal Opportunity and Fair Housing

TITLE VI OF CIVIL RIGHTS ACT OF 1964

42 USC 3601

Explanation/Intent

No person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Sanctions for Non-Performance

- Termination of or refusal to grant or continue financial assistance.
- Refer the matter to U.S. Attorney General for civil action.

TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968, amended by the COMMUNITY DEVELOPMENT AND HOUSING ACT OF 1974 to include prohibition against discrimination based on sex and further amended by

the FAIR HOUSING ACT OF 1988 to include prohibition against discrimination on the basis of handicap and familial status.

Explanation/Intent

The "Public Act 90_284" The Fair Housing Act (42 U.S.C. 3601_20) prohibits discrimination based on race, color, religion, sex, national origin, handicap or familial status in the following:

- selling or renting housing
- advertising the availability of housing
- lending by commercial lenders
- using any real estate service such as a broker
- further, Grantees must certify that they will affirmatively further Fair Housing

These prohibitions apply to the following types of housing:

- single-family housing owned by a private individual when a broker is used or when discriminatory advertising is used;
- single-family houses not owned by private individuals;
- single-family houses owned by a private individual who owns more than three such houses, or who, in any two-year period, sells more than one in which the individual was not the most recent resident;
- multi-family dwellings of five or more units
- multi-family dwellings containing four or fewer units, if the owner does not reside in one of the units.

Sanctions for Non-Performance

- Complaints will be sent to HUD.
- HUD may take action or allow jurisdictions with similar laws to take action.
- Court action may be taken by an individual.
- If requested by the complainant, court action may be taken by the U.S. Attorney General.
- Monetary amounts may be awarded for violations.

EXECUTIVE ORDER 11063 - EQUAL OPPORTUNITY IN HOUSING as amended by EXECUTIVE ORDER 12259. (Pertinent regulations are contained in 24 CFR part 107)

Explanation/Intent

Prevents discrimination in housing and related facilities owned or operated by the Federal Government, or provided with Federal financial assistance, and in the lending practices of institutions relating to residential property insured or guaranteed by the Federal Government.

Sanctions for Non-Performance

- Cancellation or termination of any agreement or contract.
- Refrain from extending further aid under any program.
- Refuse to approve a lending institution or any other lender as a beneficiary under any program.

SECTION 109 OF TITLE I - HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

42 USC 5309

Explanation/Intent

No person in the United States shall on grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or part under this Title, including employment, benefits and services of any program or activity which receives a loan guarantee under this Title.

Sanctions for Non-Performance

- Refer the matter to the Governor in an effort to secure compliance.
- Refer the matter to the U.S. Attorney General for civil action.
- Terminate, reduce or limit the availability of grant payments.

AGE DISCRIMINATION ACT OF 1975, as amended

42 USC 6101 et seq.

Explanation/Intent

No persons in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Sanctions for Non-Performance

- Termination of or refusal to grant or continue Federal financial assistance.
- Referral to the Department of Justice for civil action.

NATIONAL FLOOD INSURANCE PROGRAM

Explanation/Intent

Section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4016) provides that no Federal assistance for acquisition or construction may be provided to a Grantee that has been identified by the Director of the Federal Emergency Management Agency as an area having a special flood hazard unless the Grantee is participating in the National Flood Insurance Program.

42 USC 4016

Other Requirements

HATCH ACT

Explanation/Intent

A State or local officer may not do the following:

- use his authority to affect the result of an election or nomination for office;
- coerce a State or local officer or employee to contribute to a political party or candidate;
- be a candidate for elective office in a partisan election (exceptions: Governor, Lieutenant Governor, Mayor of a city, elected head of a State or municipal department not covered by a merit system, and an individual holding elective office.)

Sanctions for Non-Performance

Violations investigated by Special Counsel who may refer case to Merit Systems Protection Board of hearing. Penalties may include:

- removal of employee from office or employment;
- withholding a portion of State or local government's loan or grant from the Federal government

5 USC 1501 et seq.

NOTE: Grantee will comply with other provisions of Title I of the Housing and Community Development Act of 1974, as amended, the Vermont Community Development Act, the Rules adopted thereto and all other applicable laws and regulations including **Vermont Act 250**.

General Sanctions for Non-Performance

The Secretary of HUD, after a review of the grantee's performance, may determine that the program has not been carried out substantially as described in the application or, that the recipient has not complied with the Act and other applicable laws and regulations. In these cases the Secretary may follow any one of a number of courses of action which are described in section 570.910 - 570.913 of Title 24 CFR.

The most serious of these are:

- Terminate payments, or
- reduce payments, or
- limit the availability of other funds under this Title, or
- refer case to the Attorney General for civil action.

Fact Sheet for Working with Section 106

Section 106 Participation by APPLICANTS AND RECIPIENTS OF FEDERAL ASSISTANCE, PERMITS AND LICENCES (Issued October 1988)

Introduction

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of their undertakings, including undertakings they assist or license, on historic properties, and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings. The Council has issued regulations spelling out how agencies are to comply with Section 106. [36 CFR Part 800] These regulations, which were comprehensively revised and published in 1986 at 51 CFR 31115, are discussed in detail in the Council publication, *Section 106, Step-by-Step*.

Among the innovations in the revised regulations were specific provisions for participation in Section 106 review by holders of and applicants for Federal assistance, permits, and licenses. The purpose of this fact sheet is to highlight these provisions and explain how they can be used.

Definitions

The regulations define the **agency official**, the party responsible for carrying out compliance with Section 106 on behalf of the Federal agency, as “the Federal agency head or a designee with authority over a specific undertaking, including any State or local government official who has been delegated legal responsibility for compliance with Section 106 and Section 110(f) in accordance with law.” [36 CFR § 800.2(b)]

An **interested person** is defined in the regulations as “those organizations and individuals that are concerned with the effects of an undertaking on historic properties.” [36 CFR § 800.2(h)] Applicants for Federal assistance, permits and licenses may choose to participate in Section 106 review in “the manner prescribed in these regulations.” [36 CFR § 800.1(c)(2)(ii)]

The word **applicant** is used in this fact sheet in reference to the terms “applicant for Federal assistance or for a Federal license or permit” and “applicants for or holders of grants, permits, or licenses” as used in the regulations. [36 CFR §§ 800.1(c)(2)(ii) and 800.5(e)(1)(iii)]

The **Section 106 review** is defined in *Section 106, Step-by-Step* as the “review process established under Section 106 of the National Historic Preservation Act and administered by the Advisory Council on Historic Preservation under its regulations at 36 CFR Part 800.” In other words, it is the review process prescribed by the Council’s regulations.

A State Historic Preservation Officer (SHPO) is defined in the regulations as “the official appointed or designated pursuant to Section 101(b)(1) of the [National Historic Preservation] Act to administer the State historic preservation program or a representative designated to act for the [SHPO].” [36 CFR § 800.2(n)]

A brief look at Section 106 review

How does Section 106 review work? The standard review process is spelled out in Federal regulations issued by the Advisory Council on Historic Preservation. Entitled “Protection of Historic Properties,” the regulation appears in the U.S. Code of Federal Regulations at 36 CFR Part 800. The process involves five basic steps, as follow:

Step 1: Identify and evaluate historic properties

The Federal agency responsible for an undertaking begins by identifying the historic properties the undertaking may affect. To do this, the agency first reviews background information and consults with the State Historic Preservation Officer (SHPO) and others who may know about historic properties in the area. Based on this review the agency determines what additional surveys or other field studies may be needed, and conducts such studies.

If properties, that is, districts, sites, buildings, structures, or objects, are found that may be eligible for inclusion in the National Register of Historic Places, but have not yet been included in the Register, the agency evaluates them against criteria published by the National Park Service, which maintains the Register. This evaluation is carried out in consultation with the SHPO, and if questions arise about the eligibility of a given property, the agency may seek a formal determination of eligibility from the Secretary of the Interior. If a property has already been included in the National Register, of course, further evaluation is not ordinarily necessary. Section 106 review gives equal treatment to properties that have already been included in the Register and those that are eligible for inclusion.

Step 2: Assess effects

If historic properties, that is, properties included in or eligible for inclusion in the National Register, are found, the agency then assesses what effect its undertaking will have on them. Again, the agency works with the SHPO, and considers the views of others. The agency makes its assessment based on criteria found in the Council’s regulations, and can make one of three determinations:

- **No effect:** the undertaking will not affect historic properties;

- **No adverse effect:** the undertaking will affect one or more historic properties, but the effect will not be harmful;
- **Adverse effect:** the undertaking will harm one or more historic properties.

Step 3: Consultation

If an adverse effect will occur, the agency consults with the SHPO and others in an effort to find ways to make the undertaking less harmful. Others who are consulted, under various circumstances, may include local governments, Indian tribes, property owners, other members of the public, and the Council. Consultation is designed to result in a Memorandum of Agreement (MOA), which outlines measures agreed upon that the agency will take to reduce, avoid, or mitigate the adverse effect. In some cases the consulting parties may agree that no such measures are available, but that the adverse effects must be accepted in the public interest.

If consultation proves unproductive, the agency or the SHPO, or the Council itself, may terminate consultation. The agency must submit appropriate documentation to the Council and request the Council's written comment.

Step 4: Council comment

The Council may comment during step 3 of the process, by participating in consultation and signing the resulting MOA. Otherwise, the agency obtains Council comment by submitting the MOA to the Council for review and acceptance. The Council can accept the MOA, request changes, or opt to issue written comments. If consultation was terminated, the Council issues its written comments directly to the agency head, as the agency has requested.

Step 5: Proceed

If an MOA is executed, the agency proceeds with its undertaking under the terms of the MOA. In the absence of an MOA, the agency head must take into account the Council's written comments in deciding whether and how to proceed.

Alternative approaches

The Section 106 regulations also spell out three alternative means of complying with Section 106. These are:

- Programmatic Agreements among an agency, the Council, one or more SHPOs, and others;

- Counterpart regulations developed by an agency and approved by the Council;
- An agreement between the Council and a State, which substitutes a State review system for the standard Section 106-review process.

How applicants can participate in the process

The Council's regulations require that "[w]hen the undertaking subject to review under Section 106 is proposed by an applicant for Federal assistance or for a Federal permit or license, the applicant may choose to participate in the Section 106 review in the manner prescribed in these regulations." [36 CFR § 800.1(c)(2)(ii)]

During the steps of identification, evaluation, and determination of effect in Section 106 review, there are a number of points at which an applicant may choose to participate:

- in determining whether historic properties exist in the area to be affected by an undertaking, a Federal agency is required to seek information from "parties likely to have knowledge of or concerns with historic properties." [36 CFR § 800.4(a)(1)(iii)] An applicant could be such a party.
- If an agency determines that no historic properties exist in the area of potential effects, the agency is encouraged to notify "interested persons and parties known to be interested in the undertaking and its possible effects in historic properties." [36 CFR § 800.4(d)] An applicant could be provided with such notice.
- If an agency determines that historic properties do exist in the area of potential effects, the agency must determine the effects of the undertaking on those properties, "giving consideration to the views, if any, of interested persons." [36 CFR § 800.5(a)] An applicant could be such a person. If the agency determines that there will be no effect on historic properties, it must notify "interested persons who have made their concerns known." [36 CFR § 800.5(b)]
- If an undertaking will have adverse effects on one or more historic properties, the responsible Federal agency consults with the SHPO, sometimes the Council, and sometimes other interested persons, to seek ways to avoid or reduce the effects. [36 CFR § 800.5(e)] "Applicants for or holders of [Federal] grants, permits, or licenses, and owners of affected lands" must be invited to participate in this consultation when they so request. [36 CFR § 800.5(e)(1)(iii)] Consultation is intended to result in a Memorandum of Agreement (MOA), which specifies what steps will be taken to avoid or reduce adverse effects. If applicants have participated in consultation, they may be invited to concur in any such agreement, if the Federal agency, the

SHPO, and the Council, if it is participating in consultation, agree. [36 CFR § 800.5(e)(4)]

Circumstances under which applicants can carry out Section 106 responsibilities on behalf of Federal agencies

Only one Federal agency, the Department of Housing and Urban Development (HUD), has been specifically authorized by law to delegate its Section 106 responsibilities. HUD may delegate these duties to applicants of Community Development Block Grants, and certain other grants, with respect to undertakings funded by such grants. When this delegation has occurred, the grant applicant--always a State or local government--become the agency official for purposes of Section 106 review.

Some other agencies may have statutory authorities that could be interpreted as permitting the delegation of Section 106 responsibilities. Any agency that proposed to delegate its Section 106 responsibilities with respect to programs other than the HUD programs mentioned above should provide the Council with an explanation of its legal authority to do so.

The regulations also stipulate that “[t]he Agency Official may use the services of grantees, applicants, consultants, or designees to prepare the necessary information and analyses, but remains responsible for Section 106 compliance.” [36 CFR § 800.1(c)(1)(I)] Thus, even when a Federal agency uses the services of others, such as recipients, to prepare the information necessary and conduct the analyses required to permit the agency to comply with Section 106 and its regulations, the agency is fully responsible for Section 106 compliance.

Sometimes it is appropriate for an agency to delegate preservation activities to applicants or other non-Federal entities through a **Programmatic Agreement** negotiated with the Council, as is prescribed in 36 CFR § 800.13. In such cases, the agency retains the responsibility for compliance with Section 106, but does so programmatically through an agreement with the Council covering “a particular agency program, a large or complex project, or a class of undertakings that would otherwise require numerous individual requests for comments.” [36 CFR § 800.13(a)] The agreement may provide for parties other than the agency to carry out activities similar to those that would be carried out by the agency itself under the regulations were the agreement not in force. Such agreements are used, for example, in cases in which a grant recipient is responsible for administering sub-grants to other parties whose activities may affect historic properties. Programmatic Agreements are the subject of another Council fact sheet, *Programmatic Agreements under Section 106*, and a Section 106 guidance document issued in draft, *Preparing Agreement Documents*.

Facilitating participation

Applicants can facilitate their participation in Section 106 review by advising the Federal agency responsible for compliance with Section 106, as early as possible in the planning of an assisted, permitted, or licensed undertaking, of

their desire to participate, and specifically where applicable, to be consulting parties and to be given the opportunity to concur in agreements.

Conclusion

The Council regulations provide applicants for and recipients of Federal assistance, permits, and licenses, with opportunities to actively participate in Section 106 review at a number of points in the process. The Council encourages these applicants and applicants to coordinate their work with other agencies who might be involved in the review process, and with the Council itself, in order to establish the best means of facilitating such participation.

For more information, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. Telephone: (202) 786-0503.

The Secretary of the Interior's Standards for Rehabilitation

The Secretary of the Interior is responsible for establishing standards for all national preservation programs under Department authority and for advising Federal agencies on the preservation of historic properties listed or eligible for listing in the National Register of Historic Places.

*The Standards for Rehabilitation, a section of the Secretary's Standards for Historic Preservation Projects, address the most prevalent preservation treatment today: **rehabilitation**. Rehabilitation is defined as the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values.*

The Standards that follow were originally published in 1977 and revised in 1990 as part of Department of the Interior regulations (36 CFR Part 67, Historic Preservation Certifications). They pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior of historic buildings. The Standards also encompass related landscape features and the building's site and environment as well as attached, adjacent or related new construction.

The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility. The application of these Standards to rehabilitation projects is to be the same as under the previous version so that a project previously acceptable would continue to be acceptable under these Standards.

- 1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- 2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
- 3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
- 4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
- 5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
- 6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
- 7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
- 8) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
- 9) New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
- 10) New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

U.S. Department of the Interior
National Park Service
Preservation Assistance Division
Washington, DC
Effective March 28, 1990