

### **6.1.1 SOP No. 1: Section 106 Consultation**

Section 106 of NHPA requires federal agencies to take into account the effects of their undertakings on historic properties, and afford ACHP a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations issued by ACHP, "Protection of Historic Properties" (36 CFR Part 800). Coordination and consultation with SHPO, appropriate THPOs, and ACHP is a key aspect of Section 106 cultural resource compliance at ARC. Technical information regarding undertakings and cultural resources must be provided to SHPO and THPOs in a timely manner to prevent foreclosure of a SHPO/THPO opportunity to comment

NPR 8510.1 requires an SOP for identifying, evaluating, and treating the effects of all undertakings on historic properties through Section 106 of NHPA consultation to include the public, Native Americans, SHPOs/THPOs, and other consulting parties in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties. Note that NASA may confer with the consulting parties on multiple steps in the process at the same time, which will substantially reduce the time involved in complying with Section 106. Appendix G contains a checklist of items to submit to SHPO as part of the Section 106 process.

#### ***Applicable Laws/Regulations/Procedural Requirements***

- National Historic Preservation Act
- National Environmental Policy Act
- NASA Policy Directive 8500.1
- NASA Procedural Requirements 8510.1 and 8553.1

#### ***Policy***

- The HPO in the Facilities Engineering Division is designated as the point of contact for the Section 106 process, including those projects proposed by organizations that are subject to the Section 106 process, to maintain and foster relationships with the FPO; SHPO; THPO, for activities affecting tribal lands; Native Americans; ACHP; other consulting and interested parties; and the public, for activities related to the CRM Program.
- ARC personnel, contractors, and project managers must consult with the HPO to determine whether a proposed action constitutes an undertaking that may affect historic properties.
- The HPO will ensure that identification and evaluation of historic properties, including properties of traditional religious and cultural importance to Native Americans, are completed in compliance with Section 106 of NHPA prior to an undertaking.
- The HPO will ensure that impacts of proposed actions and undertakings that might affect cultural resources are considered pursuant to NEPA and NHPA.
- Avoidance of adverse effects to NRHP-eligible historic buildings will be proactively incorporated into the planning process.

- Until such time as SHPO has concurred with NASA's determination that a historic building is ineligible for inclusion to the NRHP, it will be treated as potentially eligible.
- Procedures covered herein apply to in-house work, contracted work, and work conducted by outside agencies or tenants/lessees to ARC facilities.
- Persons who meet the Secretary of the Interior's guidelines for professional qualifications (36 CFR Part 61, Appendix A) will conduct all identification and evaluation activities.

## **Procedures**

### **I. General Information:**

- A. The Section 106 process must be completed for undertakings that affect historic properties prior to starting work. Initiating the Section 106 process in a project's early planning stages allows the fullest range of options to minimize or mitigate any adverse effects on historic properties. The goal of NHPA is to preserve historic properties for future generations to the extent possible. Historic properties are nonrenewable resources that illustrate the history of the U.S.
- B. Eligible historic architectural properties include (but are not limited to) districts, individual buildings, and test stands. If a property has been surveyed and SHPO has concurred with the determination that the property is not eligible for listing in the NRHP prior to the undertaking, then the Section 106 review is generally streamlined.
- C. The HPO will determine the presence or absence of historic properties in the APE. The HPO has the final responsibility for making the "determination of effects" that a project or undertaking may have on historic properties. There are three possible outcomes:
  - "No Historic Properties Affected,"
  - "No Adverse Effect," or
  - "Adverse Effect."

The Section 106 Process is outlined below:

#### **Step 1: Initiate the Section 106 Process:**

- A. Establish undertaking. ARC personnel, contractors, and project managers must consult with the HPO to determine whether a proposed action constitutes an undertaking. An undertaking is defined as a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency (36 CFR Part 800.16(y)). The HPO will coordinate with EMD to review all actions proposed or planned by ARC and/or tenant/lessee that may affect historic properties. These include missions; plans, specifications, and work orders; specifications for maintenance, repair, and alterations; demolition to any buildings or structures; and lease agreements of ARC properties. If the HPO determines that there is no undertaking with potential to affect historic properties, the Center has no further Section 106 obligations. If the HPO determines that there is an

undertaking, the HPO must then determine whether it is a type of activity that has the potential to cause effects on historic properties.

B. Potential to cause effects. An undertaking will have an effect on a historic property when the action has the potential to result in changes to the character or use of the historic property, such as diminished or loss of historic integrity. The HPO will review proposed actions to determine if an undertaking has the potential to affect historic properties.

1. If the HPO determines that the undertaking has no potential to affect historic properties, the HPO must document the decision for internal information and to provide information should an outside interest make inquiry. The Center has no further obligations under Section 106 and the action may proceed.

2. If the HPO determines that the undertaking has the potential to affect historic properties, then the HPO will initiate the Section 106 consultation process. The HPO must consult with SHPO, and should also plan to involve the public, and identify other potential consulting parties. If the undertaking affects federally recognized Tribes, then the THPO of those Tribes that have a THPO may also be consulted. The Section 106 review should be coordinated with any other required reviews (i.e., NEPA and NAGPRA). The HPO may use information from other review documents to meet Section 106 requirements. The Section 106 process proceeds to Step 2 (below).

## Step 2: Identify Historic Properties

A. Area of Potential Effects. If the undertaking could affect historic properties, the HPO will determine the scope of appropriate identification efforts. The HPO will establish the APE for the undertaking in conjunction with SHPO (SHPO has 30 days to respond). The APE is defined as “the geographic area(s) within which an undertaking may directly or indirectly cause changes in the historic character or use of historic properties, if any such properties exist” (36 CFR Part 800.16(d)).

B. Identification efforts. The HPO will review background information, consult with SHPO and other consulting parties, seek information from knowledgeable parties, and conduct additional studies, as necessary, to determine whether historic properties are located within the APE. If the APE has not been surveyed, the HPO will take steps necessary to ensure a reasonable and good faith effort to carry out appropriate efforts to identify resources (see SOP Nos. 2 and 3, and Section 5.2.1 of this ICRMP for further details on cultural resources identification methodology). Professionals who meet the Secretary of Interior’s Professional Qualification Standards in 36 CFR Part 61, Appendix A, will perform all identification efforts.

C. Evaluation. Districts, sites, buildings, structures, and objects listed in or eligible for the NRHP are considered historic properties. If the NRHP eligibility status of resources within the APE is unknown or requires further evaluation, then the HPO will ensure completion of an evaluation by appropriate, qualified personnel. The evaluator

will consult archival information, consulting parties, and other records, as appropriate, to assess the NRHP eligibility status of the property that may be affected. Resources will be evaluated against the NRHP criteria (see SOP Nos. 2 and 3, and Section 5.2.2 of this ICRMP for further details on cultural resources evaluation). The HPO will seek a formal Determination of Eligibility from SHPO on resources evaluated in the APE, to which SHPO will have 30 days to respond.

1. If the HPO finds that there are no historic properties present in the APE and SHPO concurs or has previously concurred with a Determination of Eligibility, then the HPO may make a finding of “No Historic Properties Affected.” Or, if the HPO finds that there are historic properties present, but determines that the undertaking will not affect the historic properties, the HPO may also make a finding of “No Historic Properties Affected.” The HPO will provide documentation of this finding to SHPO as set forth in 36 CFR Part 800.11(d). The HPO also notifies consulting parties of the decision and makes the documentation available to the public (for example, via the Center website). If SHPO does not object within 30 days, ARC’s responsibilities under Section 106 are fulfilled and the undertaking may proceed. However, if SHPO disagrees with the finding of “No Historic Properties Affected,” and SHPO considers that the proposed undertaking will affect historic properties, the Section 106 process continues to Step 3 (below).

2. If the HPO, in consultation with SHPO and consulting parties, finds that historic properties are present in the APE and will be affected by the undertaking, the Section 106 process continues to Step 3 (below).

### Step 3: Assess Adverse Effects

- A. **Criteria of Adverse Effect.** The HPO, in consultation with SHPO and consulting parties, will assess the effects on historic properties in the APE by applying the criteria of adverse effect (36 CFR Part 800.5).

1. If the HPO finds that the proposed undertaking or action does not meet the criteria of adverse effect and will not adversely affect historic properties, then the HPO may make a finding of “No Adverse Effect.” The HPO will provide documentation of this finding to SHPO as set forth in 36 CFR Part 800.11(e). The HPO also notifies consulting parties of the decision and makes the documentation available to the public for comment (for example, via the Center website). If SHPO does not object within 30 days, ARC’s responsibilities under Section 106 are fulfilled and the undertaking may proceed.

However, if any objections in writing are received during that review period, consultation will continue to resolve the disagreement, and/or ACHP will be requested to review the finding in accordance with 36 CFR Part 800.5(c)2-3. If the consulting parties find that there is an adverse effect, or if the parties cannot agree and ACHP determines within 15 days that there is an adverse effect, the Section 106 process continues to Step 4 (below).

2. If the HPO finds that the proposed undertaking meets the criteria of adverse effect and will result in adverse effects on historic properties, the Section 106 process continues to Step 4 (below).

#### Step 4: Resolve Adverse Effects

A. Ongoing consultation. The HPO will continue consultation with SHPO and consulting parties to develop and evaluate alternatives or modifications to the proposed undertaking that could avoid, minimize, or mitigate the adverse effects on historic properties. The HPO will make information available to the public and provide an opportunity for comment about resolving the adverse effects of the proposed undertaking.

B. Design alternatives. Depending on the urgency of the undertaking, the Center may redesign or consider alternatives to the proposed undertaking to avoid any adverse effect, taking into account feasibility and economic analyses for demolition of historic properties. Alternatively, the Center may proceed with a mitigation plan. Mitigation plans will take into account cost and mission requirements and will be based on a balancing of economics, public interest, and the feasibility of alternatives. A finding of “No Adverse Effect” may result if the undertaking is modified or conditions are imposed, such as subsequent review of plans for rehabilitation by SHPO to ensure consistency with the Secretary of Interior’s standards, thereby avoiding adverse effects. Implementation of the undertaking in accordance with the conditions as documented would fulfill the Center’s responsibilities under Section 106.

C. Memorandum of Agreement. NASA will develop an MOA with SHPO and consulting parties in accordance with 36 CFR Part 800.6, specifying the scope and level of effort required to mitigate the adverse effects of the undertaking on historic properties. Once the MOA has been signed by all parties, it is sent to ACHP for filing, and the undertaking may proceed, subject to the terms and stipulations of the MOA. The Section 106 process is then concluded.

D. ACHP Participation. The HPO will submit documentation to ACHP to notify them of the adverse effect finding. If consultation between ARC and SHPO fails to result in an agreement, the HPO may request ACHP participation and provide ACHP with documentation specified in 36 CFR Part 800.11(g). ACHP can decide to enter consultation proceedings and has 15 days to notify the HPO and consulting parties whether it will participate in adverse effect resolution. If ACHP joins the consultation, ARC will proceed with consultation to reach an MOA. If ACHP decides not to join the consultation, ACHP will notify ARC and proceed to comment (see Section F below).

E. Failure to resolve adverse effect. ARC, SHPO, or ACHP may determine that further consultation will not be productive and will terminate Section 106 consultation by notifying all consulting parties in writing and specifying reasons for termination.

1. If NASA terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities requests an ACHP comment pursuant to 36 CFR Part 800.7(c) and

notifies all consulting parties of the request (see Section F below). Once the ACHP comment is received, the undertaking may proceed subject to the terms and stipulations of the ACHP comment. The Section 106 process is then concluded.

2. If SHPO terminates consultation, ARC and ACHP may execute an MOA without SHPO's involvement. The undertaking may proceed subject to the terms and stipulations of the MOA. The Section 106 process is then concluded.

3. If ACHP terminates consultation, the ACHP will notify the FPO and all consulting parties and provide comments to the FPO under 36 CFR Part 800.7(c). The ACHP may consult with NASA's FPO prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

F. ACHP Comment. The ACHP has 45 days after receipt of request for comment to provide comments. The ACHP will allow an opportunity for NASA, consulting parties, and the general public to provide their views. The ACHP will provide its comments to the head of the agency with copies to NASA, the FPO, and all consulting parties. The head of the agency must take the ACHP comments into account, is responsible for making the decision to implement the comments, and may not delegate his or her responsibilities pursuant to Section 106. The head of the agency will document the final decision in accordance with 36 CFR Part 800.7 (c) (4), and will provide it to ACHP prior to approval of the undertaking. Documentation will include a summary of the decision, the rationale for the decision, and evidence of consideration of the ACHP's comments. All consulting parties and the public are notified of decision and provided a copy of the summary record. All documentation and correspondence regarding the process will be kept on file by the HPO.