



NEPA & Section 106

USDA RUS ReConnect Program



Rural Development

Steven Polacek

Environmental Protection
Specialist

Agenda

- Section 106 Compliance
- NEPA Compliance

Section 106 Compliance



Completing Section 106 of the National Historic Preservation Act

- The first step is to determine which consulting parties are part of the project
 - Consulting parties are entities, such as, the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO), or Federally Recognized Tribes
 - Consulting parties are defined under 36 C.F.R. §800
- To determine tribal interests within a project, use the HUD Tribal Directory Assessment Tool ([TDAT](#))
- If tribal or federal lands are involved, contact the National Office Cultural Resource Team. Special coordination with tribes and agencies is required

Completing Section 106 of the National Historic Preservation Act

- Upon identifying the interested parties, prepare the below documents:
 - [RD Applicant SHPO Initiation Letter Template](#)
 - [RD Applicant THPO Initiation Letter Template](#)
 - Any related or supporting documentation to interested parties
- These letters, commonly referred to as **initiation letters**, notify respective entities of the project
- The applicant must request SHPO or THPO respond within 30 days of receipt of an initiation letter

Completing Section 106 of the National Historic Preservation Act

- The applicant will hire a cultural resource consultant to help with identifying historic properties
 - An historic property is defined as including “any prehistoric or historic district, site, building, structure, or object”
 - Cultural resource professionals gather information about historic properties from the [National Register of Historic Places \(NRHP\)](#), SHPO databases, archival information, property records, previous surveys and other archaeological studies
- If an historic property is found, it is required to coordinate with RUS to assess a project’s construction effects on said property
- If no historic properties are identified, send the [finding letter](#) to SHPOs and tribes for concurrence

Completing Section 106 of the National Historic Preservation Act

- Consulting with the SHPO:
 - If the SHPO has not responded to the initiation letter after thirty days, then the applicant must submit a [SHPO Finding Letter](#)
 - The finding letter consists of the determination of how the project could impact historic properties
 - This determination is recommended by the cultural resource professional or the agency
 - The SHPO then has thirty days to evaluate the finding letter

Completing Section 106 of the National Historic Preservation Act

- There are two paths to completion with the SHPO and THPO at this point in the Section 106 process:
 - If the SHPO and THPO do not respond to any of the finding letters within the response windows, then Section 106 can be concluded (if the applicant is proposing a **No Historic Properties Effectuated** or a **No Adverse Affect** finding)
 - If the SHPO and THPO provide concurrence documentation with the applicant's **No Historic Properties Effectuated** or a **No Adverse Affect** finding
- The applicant should forward all documentation related to this process to the following email: ReConnectEnvironmental@usda.gov

Completing Section 106 of the National Historic Preservation Act

- If any of these situations become apparent in the Section 106 process, RUS must be notified and involved immediately:
 - The project crosses federal land
 - The project crosses tribal lands
 - The SHPO indicates there will be adverse effects to historic properties or a program alternative needs to be developed
 - The SHPO, THPO, Indian tribe, and/or NHO disagrees with a recommended effect finding or determination of eligibility
 - A THPO or Indian tribe requests government-to-government consultation
 - Another party with a demonstrated interest in the project requests to become a consulting party, or is in disagreement with a finding

Completing Section 106 of the National Historic Preservation Act

- For any of the plausible situations on the previous slide, the Federal Preservation Officer must interface with the other applicable agencies. Please contact:
 - Erika Seibert (erika.seibert@usda.gov) or
 - Basia Howard (basia.howard@usda.gov)
- Applicants, however, serve as a pivotal role in this process. This could entail the following:
 - Financing any required archeology studies
 - Complying with any mitigants to avoid adverse effects identified through the process

NEPA Compliance



Completing NEPA

- Extensive guidance on preparing documentation to support RUS in completing NEPA reviews can be found at the [Rural Development's Environmental Guidance](#) website
- Applicants must come to EES when:
 - ESA Section 7 finding may affect determination
 - Section 106 finding of adverse effects to historic or cultural resources
- Site contamination concerns are identified
- Identification of the property in a floodplain, floodway, or wetlands

Completing NEPA

- Upon reviewing an applicant's proposal, the project is then placed into one of three NEPA determinations:
 - **Categorical Exclusion (CE)**- the proposal is not expected to have a significant impact
 - **Environmental Assessment (EA)**- the proposal requires further review. The eventual determination will either be a finding of no significant impact (FONSI) or an EIS is required
 - **Environmental Impact Statement (EIS)**- the proposal requires the final level of review
- ReConnect projects have only resulted in **Categorical Exclusion** determinations thus far

Endangered Species Act and Section 7

- Section 7 (S7) of the Endangered Species Act (ESA) requires federal agencies to work with the U.S. Fish and Wildlife Service (USFWS) to conserve endangered and threatened species
 - **Endangered**- a species that faces the possibility of extinction
 - **Threatened**- a species that has the potential to become endangered



Informal Consultants with USFWS

- For applicants that are required to complete S7 informal consultation, any outstanding applications should draft informal consultation request letters to RUS in order for RUS to interface with the appropriate USFWS office. Guidance for drafting these letters is below:
 - Include contact information for your local USFWS office
 - For each species identified, include the following:
 - Species Name
 - Critical/Suitable Habitat Status
 - Endangered/Threatened Species Status
 - ESA Determination (No Effect, MA-NLAA, MA-LAA)
 - Reasoning for ESA Determination
- Email these letters to: ReConnectEnvironmental@usda.gov

Notable Species

- Some species typically require more complex consideration. Commonly these species require informal consultations and/or surveys to be conducted to determine effects.
- Between USDA and the USFWS, conditions may be levied against the applicant to ensure minimum impact to these species. Some examples are shown below.



Western Prairie Fringed
Orchid



Michaux's Sumac



Gopher's Tortoise





United States
Department of
Agriculture

Rural Development