



State Historic Preservation Office

South Carolina Department of Archives and History
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Review & Compliance - Frequently Asked Questions

1. What is a Federal undertaking?

An undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency, those carried out with Federal financial assistance, and those requiring a Federal permit, license or approval.

2. What is a "historic property"?

A historic property is a building, structure, object, district, or site that meets the criteria for listing in the National Register of Historic Places by possessing significance in American history, architecture, archeology, engineering, or culture. In order to be considered during Section 106 and other reviews, the property must either have been previously listed in or determined eligible for listing in the National Register or be determined to be eligible for listing by a federal agency, the SHPO, or the Keeper of the National Register at the National Park Service.

3. Where can I find information on historic properties?

[SC ArchSite](#) is an online GIS based map that contains all of the *known* historic properties in the State of South Carolina. Please note: even if ArchSite does not list any historic properties in your Area of Potential Effect (APE), that does not mean that there are not any historic properties present. Be particularly sure to notify us of any existing structures in the APE, regardless of age.

Please visit our website for more [historic property research resources](#). You should also consult hard copy records at SHPO, SCIAA (SC Institute of Archaeology and Anthropology), or your local library or historic society. Please see our [Consultant's Guide to Survey and National Register Files](#) (PDF) for more information.

4. What are "consulting parties"?

Under Section 106, consulting parties are those organizations and individuals that federal agencies must consult. The role of consulting parties is advisory. Consulting parties include the following:

- (1) The State Historic Preservation Officer,
- (2) Federally recognized Indian tribes/Tribal Historic Preservation Officer,
- (3) Representatives of local governments,
- (4) Applicants for federal assistance, permits, licenses, or funds,
- (5) Other parties with a demonstrated interest in the project,

(6) The public,

(7) The Advisory Council on Historic Preservation (ACHP)

5. Does the SHPO contact these consulting parties?

No! It is the responsibility of the federal agency or its applicant to contact all appropriate consulting parties, including the Native American tribes with an interest in the project area. Contacting the SHPO is just one part of the Section 106 consultation process.

6. What is the "APE" for a project?

The area of potential effects (APE) means the geographic area or areas within which a project may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The APE is influenced by the scale and nature of an undertaking and may be different for different kinds of effects (physical, visual, auditory, for example) caused by the undertaking. Every project/undertaking has an APE, which must be described.

7. What is meant by assessment of project effects?

Applicable laws direct a federal or state agency to determine the impacts or effects of their project on identified historic properties within the APE of the project. Agencies must determine both direct effects and indirect effects of the project on historic properties. Under Section 106, the assessment of project effects results in one of three determinations:

- **No Historic Properties Affected:** no historic properties are present in the project's APE; or the project will have no effect on any historic properties in the APE.
- **No Adverse Effect:** historic properties are present in the project's APE; the project will not alter the historic characteristics of the property or the historic integrity of the property.
- **Adverse Effect:** historic properties are present in the project's APE; the project will alter or destroy the historic characteristics or integrity of the property. Adverse effects are generally resolved through the development of a Memorandum of Agreement (MOA).

Under the Coastal Zone Management Act (CZMA), projects are assessed to determine if the proposed action will affect the qualities of a historic property that make that property significant. Generally, the CZMA determines if there will be an adverse impact to historic properties or no impact to historic properties.

8. What is an "adverse effect" or "adverse impact"?

An adverse effect or impact alters, directly or indirectly, the characteristics of a historic property that qualify it for inclusion in for the National Register. An adverse effect diminishes the integrity of a historic property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on historic properties may include, but are not limited to:

- physical destruction or damage to all or part of the property (for example, grading of an archaeological site or demolition of a building)
- alteration of a property that is not consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (for example, gutting the interior of a building)
- removal of a property from its historic location
- changes to the setting of a historic property (for example, construction of a cell tower adjacent to a historic grist mill or a construction of an industrial park near a rural historic district)
- introduction of visual, atmospheric, or audible elements (for example, construction of a four-lane highway beside a rural farm complex or a branch bank in a residential historic district).

9. When/why is a Memorandum of Agreement (MOA) needed?

A MOA is needed when there is a federal agency determination of adverse effect to a historic property. The Section 106 regulations at 36 CFR § 800.6(b)(1)(i-iv) call for the federal agency to consult with the State and/or Tribal Historic Preservation Officer (SHPO, THPO) and other parties to negotiate and execute a Section 106 agreement document that sets out the measures the federal agency will implement to resolve those adverse effects through avoidance, minimization, or mitigation. Please see the Advisory Council's [Guidance on Section 106 Agreement Documents webpages](#) for more information.

10. Does the SHPO have examples of potential mitigation or sample mitigation stipulation language that could be incorporated into a MOA?

Please see our [Mitigation webpage](#) for examples of mitigation. See also the Advisory Council's website for [examples of community engagement stipulations](#) and their [recommended approach for consultation on recovery of significant information from archaeological sites](#).

11. What happens if construction is already under way when I receive federal funding or permits?

Under Section 110(k) of the National Historic Preservation Act, federal agencies are permitted to withhold grants, licenses, approvals, or other assistance to applicants who intentionally significantly and adversely affect historic properties. This provision, known as the "anticipatory demolition" section, is designed to prevent applicants from destroying historic properties prior to seeking federal assistance in an effort to avoid the Section 106 review process. If you have begun work, please stop and notify the Federal agency.

12. Can Section 106 or the Coastal Zone Management Act prevent demolition of a historic building or destruction of an archaeological site?

In many cases, the review and compliance process alerts federal and state agencies to the presence of historic properties and plans are changed to protect them. However, the laws encourage, but do not mandate historic preservation. A federal or state agency may decide that a needed project cannot proceed without harming historic properties. The agency then consults with the SHPO and other potentially interested parties. Consultation usually results in an agreement for mitigating damage to historic properties affected by the project. For example, this might involve moving a historic building in the path of a highway project or scientifically excavating an archaeological site that will be destroyed by an industrial development.

13. Are Coastal Zone Management Act reviews through the Office of Ocean and Coastal Resource Management (OCRM) the same as Section 106 reviews?

The Coastal Zone Management Act (CZMA) is different from Section 106 review, as the CZMA follows the SCDHEC-OCRM program guidance for addressing cultural resources within the 8 coastal counties of South Carolina. The CZMA directs OCRM to determine if its permitting actions will affect properties listed in the National Register of Historic Places ("Geographic Areas of Particular Concern (GAPCs)"), or eligible for listing in the National Register ("Significant Sites"). OCRM consults with the SHPO on these projects. Please see our [DHEC-OCRM Process webpage](#) for more information.

14. Does the SHPO review projects if no federal or state agency is involved?

The SHPO will review projects submitted for anticipatory or for due diligence purposes (i.e. no federal or state agency is involved or anticipated to be involved in the project).

The SHPO will:

- Recommend a historic property identification survey (cultural resources survey)

- Make a determination of National Register of Historic Places eligibility on potential historic properties IF sufficient information is provided

The SHPO will not:

- Comment on the Area of Potential Effects (APE)
- Make a determination of effect of the project on historic properties

NOTE: Requests for review of a project or parcel of land with no agency involvement **MUST** be accompanied by a Section 106 Project Review Form and will be reviewed as time allows by the SHPO. Please see our [Guidance for Reviews of Anticipatory and Due Diligence Projects](#) (PDF) for more information.

15. When should I contact the SHPO?

Contact the SHPO early in the project planning process so our comments can be incorporated, saving time and money. The SHPO will assist with technical information and guidance through the review process.

16. What does the SHPO need for review of a project?

See the applicable [project review process webpage](#) for required project review forms and supporting documentation that needs to be submitted.

Submit all required information to:

Review and Compliance Program
SC Department of Archives and History
8301 Parklane Road
Columbia, SC 29223

The SHPO cannot accept e-mailed submissions at this time.

17. How long will the review process take?

We try to review projects as quickly as possible. We have 30 calendar days per federal and state law to review your project, beginning from the date of receipt of all complete and adequately documented project review documentation is received by our office.

We review projects in the order in which they were received. If your project is received by our office on the 15th of the month, you will receive a response by the 15th of the next month. If additional information is requested, the 30 day review period begins anew from the date of receipt of the new information.

Please limit your calls or e-mails to ask about the status of your project to projects that have been in this office for at least 30 days.

We strongly recommend using some form of delivery confirmation to document receipt of your project review submittals by our office.

18. I have submitted all required information to your office. Now what?

Our office will issue a letter stating:

- The SHPO concurs with the assessments made by the federal agency or its delegated authority

- The SHPO needs additional information for its review (e.g., photographs, plans, description, National Register eligibility assessment, or historic property identification survey)
- The SHPO does not concur with the assessments made by the federal agency or its delegated authority, and provides reasoning behind its assessment

19. What is the difference between a restrictive covenant and an easement?

Broadly, a covenant is a promise by a single party to engage in or refrain from certain conduct. It binds the party who makes the covenant and can include certain restrictions, conditions, and prerequisites. A covenant that runs with the land can be applied to real property to bind future title holders of the property to the covenant.

An easement is a right to do something or to prevent someone else from doing something over the real property of another. It is a real property interest, but legal title to the underlying land is retained by the original owner for all other purposes.

20. How are covenants and easements used to protect archaeological sites and other historic properties?

A covenant that runs with the land can be placed by the owner of real property on the portion of the land that contains an archaeological site or other historic property. This covenant will stipulate the promise and restrictions for protecting and preserving the historic property and will bind future title holders to the covenant's promises and restrictions.

A conservation easement can protect a historic property by the owner giving right of use, such as development rights or other incompatible purpose, to a second party to disallow development on the real property that contains the historic site.

Because the covenant or easement is a document that pertains to real property, it must be placed on record at the county office that registers deeds to be in effect.

21. Why do I need to consider archaeological sites in my project area?

Archaeology is the scientific study of human-related material remains and the cultural and environmental settings in which the material remains were left. As such, archaeological sites are non-renewable resources. Once land-altering actions destroy the material remains and settings that comprise an archaeological site, they cannot be put back.

Several federal and state laws seek to protect significant archaeological sites by first providing for their identification and preservation or study prior to permitting, licensing, funding, or assisting a project. At the federal level, the National Historic Preservation Act and the National Environmental Policy Act apply. At the state level, the South Carolina Coastal Zone Management Act, the South Carolina Mining Act, and the State Owned or Leased Historic Properties Law are relevant.

22. Does agriculture or silviculture destroy archaeological sites?

Both types of practices alter the locations of material remains and the cultural and environmental settings in which they are found. Common agricultural practices such as plowing and discing usually alter only the uppermost 12 to 18 inches of ground across a continuous surface. Silvicultural practices for preparing planting beds commonly alter up to 18 inches of ground in furrows six feet apart, with the soil from the furrow thrown onto the intervening six-foot width of ground.

Depending on how deep the material remains and settings of a particular site extend, artifacts, features (pits, postholes, cellars, wells, etc.), plant and animal remains, and more can escape the effects of plowing or silviculture. In addition, studies conducted by archaeologists of material remains in plowed ground have shown that the material remains do not move far horizontally and that the patterns of artifact distribution apparent even after years of plowing can still be used to identify areas of a site worthy of closer investigation. The effects of silvicultural practices are less studied, but it is known that the planting beds themselves can remain unaltered by the furrowing process, and that the soil thrown onto the beds from the furrows can help preserve archaeological materials beneath.

23. What is a treatment plan?

Treatment can be considered work carried out to achieve a historic preservation goal. Some examples of treatment of a historic property are preservation, restoration, rehabilitation, documentation, archaeological investigation, or public education. A treatment plan presents a specific course of action developed for a specific historic property.

24. What is a data recovery plan?

Data recovery is a shorthand term for the collection of facts from which to generate important information about history or prehistory. The recovery of data is a treatment option that usually is applied to an archaeological site, and only when preservation of the site is not possible.

25. Is a treatment plan the same as a data recovery plan?

No. Data recovery is a type of treatment, and a data recovery plan is a type of treatment plan. However, not all treatment plans are data recovery plans or include provisions for data recovery.

26. Is there any good guidance for developing a data recovery plan?

The Advisory Council on Historic Preservation provides [guidance for developing a data recovery plan](#). The plan is to be consistent with applicable federal and state guidelines. The plan details several items:

- a. Results of previous research relevant to the project
- b. Research problems or questions to be addressed with an explanation of their relevance or importance
- c. Field and laboratory analysis methods to be used, with a justification of cost-effectiveness, applicability to the project/property, and research needs
- d. Methods of artifact, data, and other records management
- e. Provisions for disseminating the research findings and presenting to the public
- f. Curation of artifacts and records
- g. Evaluation and treatment of unanticipated discoveries

[National Register Bulletin 36, Guidelines for Evaluating and Registering Archeological Properties](#), discusses important information and research questions and stresses the connection between the archaeological data and the research questions is to be explicit.

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