National Historic Preservation Act 1966 (NHPA)

- Established Federal Policy to:
  - Foster productive harmony between modern society and historic resources
  - Provide preservation leadership
  - Administer historic resources in spirit of stewardship
  - Assist preservation efforts of state and local governments, Tribes, and the public
Federal Agency Responsibilities Under NHPA

- **Section 110**
  - Requires Creation of comprehensive Federal agency historic preservation program
  - Mandates consideration of historic properties and affirmative Federal stewardship

- **Section 106**
  - Creates agency accountability for effects of Federal undertakings on historic properties.
Section 106

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of any expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.
Four Steps of Section 106 Review

- **Step 1**: Initiation of the process
- **Step 2**: Identification of historic properties
- **Step 3**: Assessment of adverse effects
- **Step 4**: Resolution of adverse effects
Participants

- Federal agencies
- Council
- Consulting Parties
- Public
NEPA & 106 Similarities

- Authorize development of agency-specific alternative procedures.
- Require gathering information on the potential effects of an action/undertaking and considering alternatives to avoid or minimize adverse effects.
- Vary depending on the scope of the proposed action.
- Emphasize initiating early in project planning.
- Emphasize public notification and consultation.
- Require the process to be completed prior to a Federal decision.
NEPA & 106 Similarities

NEPA

Study Area

- Varies depending on the extent of the potential impacts associated with the alternative courses of action.

Section 106

Area of Potential Effect

- Is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.
Differences between NEPA & Section 106

**NEPA**
- Federal Action - Projects, plans, policies, and programs financed, assisted, conducted, regulated, or approved by Federal agencies.

**Section 106**
- Federal Undertaking - 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.
## Differences between NEPA & Section 106

### NEPA

**Significant Impact**
- Based on complex and intensity.
- Analyzed in several contexts (society, affected regions and interests, and locality).
- Intensity refers to severity of effect (magnitude, geographic extent, duration, frequency).

### Section 106

**Adverse Effect**
- Found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the NRHP in a manner that would diminish the properties integrity. Includes reasonably foreseeable effects (later in time, further in distance, or be cumulative).
Differences between NEPA & Section 106

NEPA
Mitigation
- Includes avoiding, minimizing, reducing, as well as compensating for the impact to the human environment

Section 106
Mitigation
- “Distinct from the terms “avoid” and “minimize” and means to compensate for the adverse effects to historic properties.” (ACHP, 2013)
Initiate Section 106 Process
   Establish undertaking
   Identify appropriate SHPO/THPO
   Plan to involve the public
   Identify other consulting parties

UNDETECTING MIGHT AFFECT HISTORIC PROPERTIES

Identify Historic Properties
   Determine scope of efforts
   Identify historic properties
   Evaluate historic significance

HISTORIC PROPERTIES ARE AFFECTED

Assess Adverse Effects
   Apply criteria of adverse effect

HISTORIC PROPERTIES ARE ADVERSELY AFFECTED

Resolve Adverse Effects
   Continue consultation

FAILURE TO AGREE

COUNCIL COMMENT

FAILURE TO AGREE

HISTORIC PROPERTIES ARE ADVERSELY AFFECTED

NO HISTORIC PROPERTIES AFFECTED

NO HISTORIC PROPERTIES ADVERSELY AFFECTED

NO HISTORIC PROPERTIES AFFECTED

NO UNDERTAKING/NO POTENTIAL TO CAUSE EFFECTS
Coordination for CE’s

TIMING AND COMMUNICATION
SECTION 106 AND CE

INITIATE the process
IDENTIFY historic properties
ASSESS adverse effects
RESOLVE adverse effects

Proposed Action is Described in Agency CE
Does the Proposal Have Extraordinary Circumstances?
Decision
Implementation with Monitoring as Provided in the Decision

Agreement (MOA/PA) or Council Comment
Coordinate for EA's

SECTION 106 AND EA

- INITIATE the process
- IDENTIFY historic properties
- ASSESS adverse effects
- RESOLVE adverse effects

Agreement (MOA/PA) or Council Comment

Significant Environmental Effects Uncertain or No Agency CE
- Develop EA with Public Involvement to the Extent Practicable
- Significant Environmental Effects?
- FONSI
- Implementation with Monitoring as Provided in the Decision
Coordination for EIS’s

**TIMING AND COMMUNICATION SECTION 106 AND EIS**

**INITIATE** the process

**IDENTIFY** historic properties

**ASSESS** adverse effects

**RESOLVE** adverse effects

Agreement (MOA/PA) or Council Comment

- Significant Environmental Effects May or Will Occur
- Notice of Intent
- Public Scoping and Appropriate Public Involvement

- DEIS

- Public Review and Comment and Appropriate Public Involvement
- FEIS
- Public Availability
- ROD

Implementation with Monitoring as Provided in the Decision
Programmatic Agreements

- PAs for complex or multiple projects
  - Developed like MOAs
  - Council must be invited to consult
  - Lack of agreement on PA for multiple undertakings triggers case-by-case review

- PAs for regional or national programs
  - Consultation required (as appropriate) between Council, NCSHPO, SHPOs/THPOs, tribes and Native Hawaiian organizations, and the public
Sources of Information

- http://www.achp.gov/pubs.html
- http://www.cr.nps.gov.nr/publications/
- http://wyoshpo.state.wy.us/