

EXHIBIT 2-H

HISTORIC PRESERVATION REVIEW PROCESS

KEY DEFINITIONS USED IN THE SECTION 106 PROCESS

Key definitions related to historic preservation requirements and the Section 106 process are listed below:

Area of Potential Effects: the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

Historic Property: any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in the National Register. This term includes, for the purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria.

National Register: the National Register of Historic Places maintained by the Secretary of the Interior.

National Register Criteria: the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register.

State Historic Preservation Officer (SHPO): the official appointed or designated to administer the State Historic Preservation Program.

Undertaking: any project, activity, or program that can result in changes in the character or use of historic properties, if any such properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. "Undertakings" include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.

THE SECTION 106 PROCESS

The following procedures outline the Section 106 process that Community Development Block Grant (CDBG) recipients must follow. All of the following steps apply equally to archaeological sites as well as to historic properties.

First: Determine if the Project is an "Undertaking" Under Section 106

It is the responsibility of the CDBG recipient, in consultation with SHPO, to determine whether or not a proposed CDBG activity constitutes an "undertaking" according to the definition noted above. For instance, in some cases, such as an economic development project involving CDBG financial assistance to a business that will result in no physical change or disturbance, the CDBG project would not constitute an "undertaking." In these cases, along with the documentation noted below, the Section 106 process would be completed. The CDBG Program Officer assigned to your project should also be consulted prior to making the determination. SHPO can be contacted at the following address:

State Historic Preservation Office
1410 Eighth Avenue
P.O. Box October 201302
Helena, MT 59620-1202

Telephone: 444-7715

Required Documentation - Documentation would only be required in the case of a determination that a project did not constitute an "undertaking" under Section 106. A letter to your CDBG Program Officer signed by the Environmental Certifying Official stating the determination and a letter of concurrence signed by SHPO are required.

Second: Establish Area of Potential Effects

Assuming a proposed CDBG project does constitute an "undertaking," grantees must consider and propose the undertaking's "area of potential effects" according to the definition noted above. The "area of potential effects" should be delineated on maps in a preliminary fashion according to the best judgment of the grantee. Later, at the next level, it may be necessary to adjust the "area of potential effects" after consulting with SHPO.

Third: Identify Historic Properties or Archaeological Sites within the Area of Potential Effects

Assuming that an undertaking and area of potential effects has been established, the grantee must review any existing information on historic properties or archaeological sites potentially affected by the undertaking, including any information concerning the likelihood that unidentified historic properties or archaeological sites may exist in the area of potential effects.

It is necessary to formally request the views of the Montana SHPO regarding further actions to identify historic properties that may be affected by completing Exhibit 2-I and providing the required information and attachments.

It is also the responsibility of the grantee to seek information locally on potential historic properties or archeological sites and potential effects of the CDBG project by contacting local organizations and individuals with knowledge of historic properties, including any local historical societies and Indian tribes.

By contacting SHPO, local individuals, and organizations or groups familiar with local historic properties or archaeological sites, the recipient will be able to determine whether there is a need for further actions, such as field surveys. If the need for a special study or survey is indicated, your CDBG Program Specialist should be contacted immediately for further guidance.

Comment: The Region VIII office of the U.S. Department of Housing and Urban Development (HUD) discourages the use of CDBG funds for archaeological field surveys unless there is documented empirical evidence that significant archaeological resources have been identified within 1000 feet of the site of the proposed CDBG project or disturbance.

Fourth: Locate Any Historic Properties

The grantee, in consultation with SHPO, must make reasonable efforts to identify any historic properties or archaeological sites that may be affected by the undertaking and gather sufficient information to assist SHPO to evaluate the eligibility of these properties for the National Register [36 CFR Part 800.4 (b)].

Fifth: Evaluating Historical Significance

The grantee must assist SHPO to perform an evaluation of eligibility of historic properties for the National Register of properties that may be affected by the undertaking and that have not been previously evaluated for eligibility. If the grantee does not agree with SHPO as to the eligibility of particular historic properties or archaeological sites for the National Register, the grantee has the right to request a determination of eligibility from the Keeper of the National Register [36 CFR Part 800].

Sixth: When No Historic Properties are Found

In the event that SHPO and the grantee agree that no historic properties or archaeological sites exist that may be affected by the undertaking, written determination of this finding must be obtained from SHPO. In such cases, SHPO will issue a finding that the proposed activity does not pose a threat to significant cultural resources and that no further cultural resource review appears warranted for the proposed undertaking. The grantee should also notify interested persons and organizations of this determination and make the documentation leading to the decision available to the public. In these circumstances, the grantee is not required to take further steps in the Section 106 process [36 CFR part 800.4 (d)].

Seventh: Assess Effects

Grantees will progress to this stage if historic properties or archaeological sites exist that have been identified according to the preceding process and that may be affected by the undertaking. Where such properties or sites exist, it is necessary for the grantee to assess the effect of the CDBG project on these properties, in coordination with SHPO, and make one of the following three determinations of effect:

- < **Option #1: Finding of No Effect;**
- < **Option #2: An Effect is Found, but Effect is Not Adverse; or**
- < **Option #3: An Effect is Found and Effect is Adverse.**

Under Section 106, the criteria for determining an "effect" and "adverse effect" are as follows [36 CFR Part 800.9]:

Criteria of Effect: An “undertaking” has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of a property's location, setting, or use may be relevant depending on a property's significant characteristics and should be considered.

Criteria of Adverse Effect: An “undertaking” is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, or association. Adverse effects may include outright physical destruction, damage, or alteration of all or part of the property, change in character or setting, or addition of inappropriate elements such as noise.

Option #1 - Finding of No Effect

In consultation with SHPO, the grantee may make a finding of "no effect." When the grantee concludes the undertaking will have no effect on historic properties or archaeological sites, the grantee shall notify SHPO by letter as well as any interested local historic preservation organization or individuals. Unless SHPO objects within 15 days of receiving such notice, the grantee is not required to take any further steps in the Section 106 process.

Required Documentation - A letter to your CDBG Program Officer, signed by the Environmental Certifying Official, stating the finding of "no effect" and a letter of concurrence signed by SHPO are required, along with the following materials:

1. A description of the undertaking including photographs, maps, and drawings, as necessary;
2. A description of the efforts used to identify historic properties or archaeological sites;
3. A statement of how and why the finding of "no effect" was found applicable; and
4. The views of SHPO, affected local governments, Indian tribes, Federal or state agencies, and the public, if any were provided, as well as a description of the means employed to gather those views.

Option #2 - An Effect is Found but Effect is Not Adverse

When a grantee finds, in consultation with SHPO, that the project or "undertaking" would have an effect on a historic property or archaeological site according to the "criteria of effect" noted above, the grantee must next decide if that effect is **adverse** or **not adverse**. This is done by the grantee applying the "criteria of adverse effect" noted above. If the grantee finds the effect is "not adverse," the recipient must obtain SHPO concurrence (in writing) with this determination and notify and submit to the Advisory Council on Historic Preservation summary information documenting the reasons for the finding. (See below for address of the Advisory Council.)

If the Advisory Council does not object to the finding of "no adverse effect" within 30 days of receipt of the notice, or if the Council objects but proposes changes that the grantee accepts, the Section 106 process is ended at this point. If the Advisory Council objects to the finding or the grantee does not agree with the changes proposed by the Council, the effect shall be considered adverse.

Required Documentation - For a finding of "no adverse effect," the following documentation must be maintained in the grantee's Environmental Review Record file:

1. A description of the undertaking including photographs, maps, and drawings, as necessary;
2. A description of the historic properties that may be affected by the undertaking;
3. A description of the efforts used to identify historic properties or archaeological sites;
4. A statement of how and why the criteria of "adverse effect" were found inapplicable; and
5. The views of SHPO, affected local governments, Indian tribes, Federal or state agencies, and the public, if any were provided, as well as a description of the means employed to gather those views.

Option #3 - An Effect is Found and Effect is Adverse

When an adverse effect on historic properties or archaeological sites is found, the grantee must notify the Advisory Council and consult with SHPO on ways to avoid or reduce the effects. The Council may participate in the consultation process. Interested individuals or public or private organizations should be informed through normal local public involvement procedures. The grantee can meet with interested members of the public or conduct a public information meeting for this purpose.

If the grantee and SHPO agree upon how the effects will be taken into account, they will execute a Memorandum of Agreement. The Council may choose to participate in this agreement. The SHPO should be consulted further as to developing the particular language of the Memorandum.

Required Documentation - For a finding of "no adverse effect," the following documentation must be maintained in the grantee's Environmental Review Record file:

1. A description of the undertaking including photographs, maps, and drawings, as necessary;
2. A description of the efforts used to identify historic properties or archaeological sites;
3. A description of the affected historic properties, using materials already compiled during the evaluation of significance, as appropriate;
4. A description of the undertaking's affects on historic properties;
5. A description and evaluation of any alternative or mitigation measures proposed;
6. A description of any alternative or mitigation measures that were considered but not chosen and the reasons for their rejection; and
7. A description of the grantee's efforts to obtain and consider the views of affected local governments, Indian tribes, and other interested persons.

HOW TO NOTIFY THE ADVISORY COUNCIL ON HISTORIC PRESERVATION

The address for the Advisory Council on Historic Preservation is:

Advisory Council on Historic Preservation
Suite 401
730 Simms Street
Golden, CO 80401

PROGRAMMATIC AGREEMENTS

In the case of complicated CDBG projects where numerous, repeated historic reviews would have to be initiated (such as a housing rehabilitation project.) SHPO recommends that grantees execute a "programmatic agreement" with SHPO and the Advisory Council describing how the process of identification of possible historic properties and determination of effect will be administered for all individual project activities. Execution of a programmatic agreement can expedite the review of numerous properties. For example, a programmatic agreement may be desirable for a grantee administering a housing rehabilitation project that may involve individual historic reviews for dozens of residences proposed for rehabilitation. Grantees who believe that this type of arrangement may assist in the completion of their CDBG projects should contact their CDBG Program Officer for further guidance.