

# Regulatory Compliance DIET

By Russell Holter  
Project Compliance Specialist

## Laws Pertaining to Cultural Resources

- National Historic Preservation Act of 1966
- 4F Transportation Act of 1966
- State Environmental Policy Act (SEPA) 1971
- Shoreline Management Act (SMA) 1971
- Growth Management Act (GMA) 1990
- RCW 27.34
- RCW 27.53 Archaeological Sites & Resources
- RCW 27.44 Indian Graves & Records (1941)
- Governor's Executive Order 05-05 (2005)



## Laws Pertaining to Cultural Resources

- Federal Law—Section 106 of the NHPA
- State Law—SEPA
- State Policy--GEO 05-05



## Environmental Reviews

**Tax Funded  
Projects or  
Projects on  
Public Lands**



Section  
106

GEO 05-05

SEPA



# D.I.E.T.

D E V A L U E  
P R O J E C T I C A T I O N  
P R O J E C T I C A T I O N



## Process Funnel

**Capital  
Programs &  
Acquisitions**



**Treatment Plan: Avoid, minimize, mitigate**

## Section 106 An Overview

- Requires substantive technical information and informed decision making.
- Involves a number of parties.
- Over the past 40 years the general evolution of the process has been towards a more consultative process with more parties that address more types of resources.



## Purpose of Section 106 Review

- *The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation... commencing at the early stages of project planning.*

36 CFR 800.1(a)

## 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 with federal financial assistance; those requiring a federal permit, license, or approval, those subject to State or local regulation administered pursuant to a delegation or approval by a federal agency.



## Examples of Undertakings Projects which utilize Federal money

- FERC Licenses, BLM grazing permits,
- FS Timber Sales, recreation developments
- COE permits, dredging, construction projects
- FHWA highway funding projects of State DOT and local government roads
- FDIC ATMs, and FCC Cell Towers
- HUD, CDBG
- ARRA projects (including energy efficiency grants).

## Identify Consulting Parties

- The Federal Agency or Agencies
- THPO: Tribal Historic Preservation Officer
- SHPO: State Historic Preservation Officer
- Applicant for Funding, License, Permit, etc.
- ACHP: Advisory Council on Historic Preservation (an independent federal agency)
- State and/or Local Governments
- Interested members of the public

## Throughout the consultation process...

Contact and consult with tribes and local government agencies, and interested members of the public about their concerns



## The Public

- Agency must seek and consider views
- Agency must provide the public with information, seek input
- Members of public may become consulting parties
- Agency may use NEPA procedures for public participation

36 CFR 800.2(d)

## Areas of Potential Effect:

The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking (36CFR800.16(d))



## Define the APE

- What are the depths and limits of your project effects?
- Locations from which elements of the project may be visible or audible
- Can you illustrate and define those limits?
- Don't forget the vertical component!



## Points to consider when identifying the project APE

- APEs may evolve over time. Be transparent in the process
- Should include all the areas affected by all project alternatives
- Should include temporary work, storage, and equipment lay-down zones



## Consultation

- Consultation takes as long as necessary to define the APE.
- There is no limit specified in Section 106 as to how long this process should take.



## Step 2: Identify the Sites

- Acquire background and historic information
- Conduct on the ground survey
- Author Report, Inventory forms,
- Consult with parties on findings

### Products

- *Open File:*
- *Letters, APE map*
- *Response letters*
- **EXEMPT Documents**
- *Site forms, Reports,*
- *Maps with site locations*
- *DOE forms, reports*



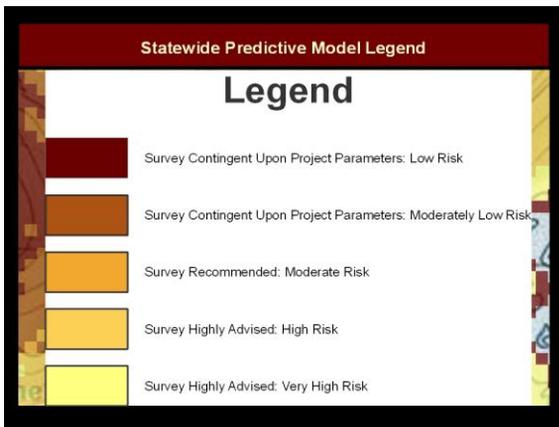
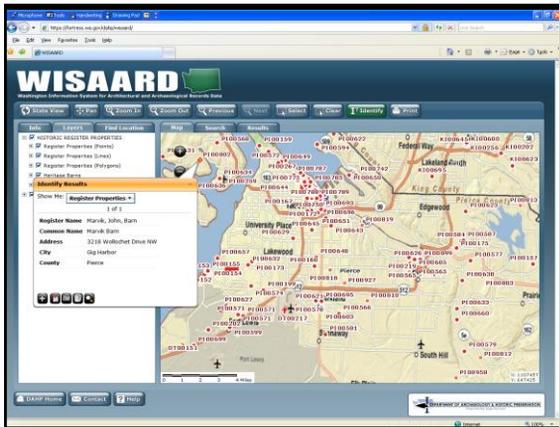
## Keepers of the Data

- DAHP maintains ~22,000 archaeological site records
- ~2,213+ National/State Register Listed Property records
- ~50,000+ inventoried properties
- ~17,000 survey reports



Archaeological site locations are not public records. RCW 42.56.300 exempts them from public disclosure.

Search engine for State and National Register listed properties available at [www.dahp.wa.gov](http://www.dahp.wa.gov)



## Evaluation of the Significance

- Evaluating the Significance of the sites in the APE using the National Register of Historic Places.
- Follow Secretary of Interior Standards, and guidelines from the National Register of Historic Places ( [www.nps.gov](http://www.nps.gov) )
- Requires the Federal Agency to consult and seek the concurrence of THPO or SHPO
- If disagree, forward to the Keeper of the NR

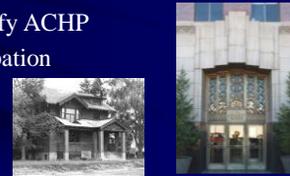
### Step 3: Evaluate Effects

- What are the impacts of the proposed project upon the National Register sites?
- Consult with the parties to determine:
  - *No Historic Properties effected*
  - *No Effect*
  - *No Adverse Effect*
  - *Adverse Effect*



### Step 4: Treatment Plan: MOA

- Memorandum of Agreement (MOA) is a legal document that formalizes the specific actions the Federal Agency will take to avoid, minimize, or mitigate the adverse effect.
- Agency must notify ACHP
- and invite participation
- Consult with the THPO and/or SHPO



### Traditional Cultural Properties/Places (TCPs)

A traditional cultural property can be significant because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community.

### Snoqualmie Falls, Washington

- figures in creation history of the Snoqualmie Tribe.
- part of the cultural continuum of the Snoqualmie people.
- falls are currently used for purification, cleansing and communication with ancestral spirits.



### How does a property owner know they have a site or cemetery on their property?

By accident (not preferred)

During pre-project review at the county permit counter (preferred)

Many local governments have specific archaeological protection ordinances that apply during development review

Require archaeological surveys prior to project (at property owners expense)

Two historic burials found in Renton, during gas line installation



### Tips

- Consult as many different parties as possible.
- For Section 106 – make the APE large and include indirect effects in the APE.
- Don't cut costs!!!!
- Consult with DAHP and Tribes as early as possible in the planning process.
- Is there a federal nexus?
- Do you need an archaeological permit?
- Is the area important to tribes or a community group?
- Do some careful shopping to acquire the services of qualified cultural resource consultants.

**QUESTIONS ?**

**[www.dahp.wa.gov](http://www.dahp.wa.gov)**

**Russell.Holter@dahp.wa.gov**  
**360-586-3533**