

# FCC Section 106 and You!



Presented by: Andrew Pulcheon, LSA Associates, Inc.  
2015 APCO Western Regional Conference  
Sacramento, California  
April 7, 2015, 2:30 p.m.

LSA

# Key Points to be Covered

- What is Section 106?
- How does the process apply to my project?
- Helpful hints
- Shameless plug
- Questions and answers

# What Can I Do with This Information?

- Gain a sense of the general process and requirements for Section 106 compliance
- Integrate historic preservation cost commitments in funding allocations
- Ask the right questions of consultants
- No experts will be made.....just enough information to be dangerous, or at least see fatal flaws

# Who is this Guy?

- Northern California Cultural Resources Group
- Registered Professional Archaeologist and Historian
- Member of the American Institute of Certified Planners
- Certified Environmental Professional
- 21 years of experience in cultural resources management

LSA

# Important Definitions

- “Historic Property” – a district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places
- “Area of Potential Effects” – the geographic area within which an undertaking may directly or indirectly alter the characteristics of historic properties
- “Consulting Party” – a participant in the Section 106 process with review and commenting responsibilities
- “Consultation” – the act of seeking, discussing, and considering the opinions of others and, where possible, seeking agreement
- “State Historic Preservation Officer” – a main player in Section 106 who represents the preservation interests of their state
- “Integrity” – the ability of a historic property to convey its significance
- “Adverse Effect” – an effect caused by an undertaking that alters the characteristics of a historic property in a way that its integrity is diminished

LSA

# What is Section 106?

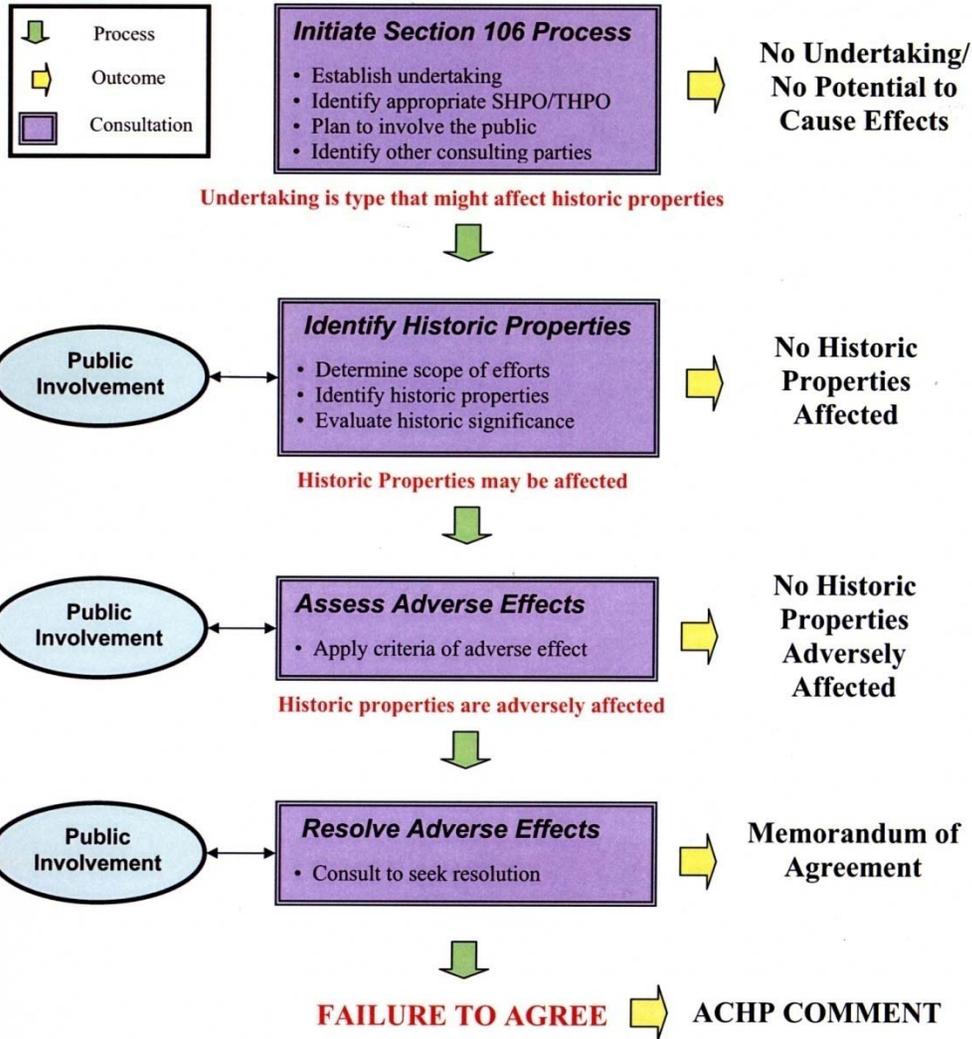
- Part of the National Historic Preservation Act of 1966
- Overseen by the Advisory Council on Historic Preservation
- Implemented by 36 CFR Part 800
- Only addresses “historic properties”
- Only applies to “undertakings”
- Emphasizes *process and consultation*

# What is Section 106? (cont)

## Two Simple Requirements of Agencies

- “Take into account” the effects of their projects on historic properties; and
- Afford the Advisory Council on Historic Preservation a “reasonable opportunity to comment” on their actions

# THE SECTION 106 PROCESS



\*Source: Advisory Council on Historic Preservation

LSA

# What is Section 106? (cont)

## National Register of Historic Places

- An official list of properties significant in the areas of history, architecture, engineering, archaeology, and culture
- Districts, sites, buildings, structures, and objects may be listed in the National Register
  - Must meet one or more of four significance criteria:
    - Criterion A, association with events that have made a significant contribution to the broad patterns of our history;
    - Criterion B, association with the lives of persons significant in our past;
    - Criterion C, embodiment of the distinctive characteristics of a type, period, or method of construction, or that represents the work of a master, or that possess high artistic values;
    - Criterion D, have yielded, or may be likely to yield, information important in history or prehistory
  - Must also possess integrity, or the ability to convey their significance
    - Seven aspects of integrity: location, design, materials, craftsmanship, feeling, setting, and association
- Some categories are automatically ineligible, such as cemeteries, birthplaces or graves, religious properties, moved or reconstructed properties, commemorative properties, and properties less than 50 years of age
- Significance + Integrity = Eligibility

LSA

# What is Section 106? (cont)

## Myths Abound

- *“Finding a historic property will kill my project.”*
- *“Historic properties must be preserved.”*
- *“We have to find all historic properties in the Area of Potential Effects.”*
- *“Only archaeological sites can be historic properties, so my collocation won’t have an adverse effect.”*
- *“All we have to do is ask the SHPO what to do, do it, and wait for clearance.”*

LSA

# What Does Section 106 Mean for My Project?

Governed by one of two “programmatic” agreements:

- The “Collocation Agreement,” formally titled the *Nationwide Programmatic Agreement for the Collocation of Wireless Antennas Executed by the Federal Communications Commission, the National Conference of State Historic Preservation Officers, and the Advisory Council on Historic Preservation* (2001)
- The “Nationwide Agreement,” formally titled the *Nationwide Programmatic Agreement for Review of Effects on Historic Properties for Certain Undertakings Approved by the Federal Communications Commission* (2004).

LSA

# What Does Section 106 Mean for My Project?<sub>(cont)</sub>

- Compliance is delegated to applicants
  - May use consultants
  - Preparers must meet *Secretary of the Interior's PQS* for most findings
- Form 620 (new towers)
- Form 621 (collocations)

# How Does It Happen?

- Identification

- Background research
  - Archival records search
  - Review published data
- Field survey (if necessary)
  - Inspection of areas to be physically disturbed
  - Description of the size, nature, and condition of identified resources
- Consultation with potentially interested parties
  - Tribes and Native Hawaiian organizations
  - Historical organizations
  - General public
- Evaluate National Register eligibility
  - Must be done in consultation
- Results are either ***No Historic Properties Affected*** or ***Historic Properties Affected***
- If *No Historic Properties Affected*, then submit to SHPO for concurrence
- If *Historic Properties Affected*, then proceed to assessing effects

LSA

# How Does It Happen? (cont)

- Assess Effects

- Review reasons for significance

- Indirect impacts are not usually an issue with archaeological sites
- Viewpoints and opinions of tribes must be taken into account

- Apply the Criteria of Adverse Effect (at 36 CFR Part 800.5(a)(1))

- *Does an undertaking alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register of Historic Places in a manner that would diminish the property's integrity of location, design, setting, materials, workmanship, feeling, or association.*

- Results are either **No Adverse Effect** or **Adverse Effect**

- If No Adverse Effect, submit documentation to SHPO requesting concurrence

- If Adverse Effect, proceed to resolving effects

LSA

# How Does It Happen? (cont)

- Resolve Effects
  - Talk to the consulting parties
    - Address those aspects of the resource meaningful to those who value it
    - Viewpoints and opinions of tribes must be taken into account
  - No preordained approach to mitigation
    - Possibilities limited only by the imagination of consulting parties
  - Execute a Memorandum of Agreement
  - File MOA with ACHP and implement mitigation
  - Provide for emergency discoveries

# Hints for Successful Compliance

- Start early, start often
  - Tardiness often a problem
    - Limits timely consultation and mitigation discussion
    - Alienates reviewers
    - Risk of violation of FCC rules and NHPA Section 110(k)
- Use qualified consultants
  - Ask for resumés and sample work product
  - Insist on thorough answers to lay questions
- Keep an open mind
  - More people at the table usually a good thing
  - Input and involvement heads off recriminations
  - If effects are discussed earnestly, barriers often shrink

LSA

# Shameless Plug

LSA Associates, Inc.

- Nine offices in California
- Employee owned, 220+ staff
- Multi-disciplinary (biology, wetlands, noise, traffic, planning, CEQA/NEPA document preparation, etc.)
- Regulatory experience, professional certifications, compliance oriented
- Extensive experience teaming with engineering firms
- Background with communications projects
- Any questions, please contact:

Andrew Pulcheon  
510-236-6810  
[andrew.pulcheon@lsa-assoc.com](mailto:andrew.pulcheon@lsa-assoc.com)

LSA

Thank You

Any Questions?

LSA