

## **Working from the Form: Selected Details for the Wisconsin § 106-submittal process**

Following are explanatory materials on selected items from the Submittal Form involving key issues of the Wisconsin § 106 Review Process.

### **Part I. GENERAL INFORMATION**

You must provide all requested information that is applicable to you and your project. Incomplete materials will be returned to you, possibly causing unnecessary delay to your project.

#### **Your Area of Potential Effect (APE), Part I. k.**

You must articulate an APE (or APEs) of sufficient magnitude to address all historic property issues that may arise through your project. Depending upon your project, there may be one or two APEs.

First, for ground disturbing projects that will not permanently alter the appearance of the project area, consideration must be given to known and unknown archeological sites that may lie under the surface of the ground and that may be affected, if not adversely affected, by the proposed undertaking. In this case, the logical APE would describe the footprint of all of the area proposed for ground disturbance.

Second, for projects that may permanently alter the appearance of the project area, a different APE may be necessary to speak to the effects, or adverse effects, to historic properties. For example, if the project involves renovation of an historic building or other structure, then the APE is the building or structure itself. If the project involves altering the appearance of the landscape, then the APE must be defined as that area within which permanent alterations may affect the use, character, setting or physical appearance of an historic property.

When you have defined the nature and extent of your project, and, therefore, are able to determine the APE(s), you must include as part of your submittal materials a copy of a USGS topographic map clearly showing the boundary of each APE. You may submit additional descriptive material as necessary.

### **II. IDENTIFICATION OF HISTORIC PROPERTIES**

You—the federal agency authority—must determine whether your undertaking, as defined by federal law, has the potential to affect a historic property. Thus, you must ascertain whether there are historic properties located within your APE(s)—as you determined earlier.

Identification of historic properties can be as straightforward as recognizing that the building you plan to renovate is listed in the NRHP. Or, identification may involve hiring a qualified archeologist and/or architectural historian to survey your APE physically to identify or locate archeological sites, buildings, other structures or landscapes that are eligible for listing in or are listed in the NRHP.

To begin to answer the question of “What’s there?”, you may consider existing database information maintained by the WHS, as well as data maintained by Native American Communities, Tribes and Nations, local historical societies, local preservation commissions, local, regional or national historic preservation organizations, or the National Park Service.

You may examine other sources of information to assist you in your determination of whether there are historic properties within your APE. For example, if your APE has been subject to prior extensive ground disturbing activities—greater in magnitude than your current project proposal, then no archeological survey would be necessary since there would be no intact archeological deposits within the APE. If you decide to do no archeological investigation based on this situation, then you must provide suitable documentation with your submittal to support your claim. Such documentation may include previous project descriptions that demonstrate the amount of ground-disturbing activity, local transportation department or state Department of Transportation road or highway cut/fill records and maps, and other similar substantive information.

Project area soils analysis may help determine whether an archeological survey is warranted. The project area may be comprised of hydric soils or post-settlement alluvium. In either case, depending upon the depth of project excavation relative to the depth of any buried potential habitation or use horizon, an archeological survey may be unnecessary. If an analysis of soil types within the APE is used to inform your decision about the necessity of an archeological survey, then you must submit materials detailing your results.

It may be that your APE has been surveyed for historic properties in the past. If so, please provide sufficient information to us so that we may locate previous reports in our archives. If we cannot obtain copies of these reports, then we will notify you in writing, requesting that you forward copies to us for our review.

Based on your APE background research, you may decide that you require the services of a qualified archeologist or architectural historian (the Secretary of the Interior has promulgated federal regulations defining “qualifications” at: <http://www.cr.nps.gov/laws/ProfQual83.htm>) to assist you with determining whether a formal survey of your APE may be necessary to locate historic properties. Of course, you may wish to contract with a qualified professional to conduct all underlying research and to assist you with your determination.

To help you locate the appropriate professionals for your project, we maintain lists of qualified archeologists ([http://www.wisconsinhistory.org/arch/preserve/index.html#consult\\_list](http://www.wisconsinhistory.org/arch/preserve/index.html#consult_list)) and architectural historians. You may be able to locate other qualified individuals through professional societies like the American Institute of Architects (AIA web site is: <http://www.aiaaccess.com/consumer/>) or the Wisconsin Archeological Survey (WAS).

With your project submittal, you must include information either identifying all historic properties located within your APE or supporting the conclusion that there are no historic properties within your APE. If qualified professionals are involved with this identification process, formal reports describing the techniques involved, scope of work carried out, other methodologies employed, results and conclusions must be included as part of your submittal materials. We request that archeological reports conform to the WAS guidelines, available on request from the WAS.

We encourage you to work with qualified professionals when in doubt and when necessary.

**Please note: The WHS Division of Historic Preservation does not offer archeological or architectural survey services.**

### III. FINDINGS

Based on your work identifying historic properties within your project APE, the nature of your project and comments you have received from consulting and other parties, you must make a determination of one of four possible findings: “no historic properties within the APE”, “no effect”, “no adverse effect” or “adverse effect”. You or those conducting research on your behalf must have a detailed understanding of how these conclusions may be reached with respect to all of the factors informing the § 106-review process. In this regard, the ACHP and the National Park Service web sites (<http://www.achp.gov/work106.html> and <http://www.cr.nps.gov/nr/publications/bulletins.htm> respectively) contain essential information for you.

First, the results of your historic property survey may be negative. That is, the professionals carrying out the survey have determined that there are no historic properties listed in or eligible for listing in the NRHP within your project APE(s). In this case, you submit the formal report supporting this conclusion with your review materials to our office for review and comments.

Second, your project may have “no effect” on any historic properties. This may be due to the nature of your project. For example, ground disturbing will occur in areas of prior ground disturbance such that no archeological sites will be effected; and, because there will be no permanent changes to the appearance of the APE after completion of the project, no buildings, other structures, or landscapes that may be present within your project APE will be affected. Or, you may be repairing damage to a building with in-kind replacement materials resulting in no net change to the property. All of these are “no effect” findings.

Third, your project may have “no adverse effect” on historic properties. Again, several bases exist to support this conclusion. You may be renovating a listed building. In this case, while the work you propose may affect the building (for example your plan includes replacement of bathroom fixtures or the HVAC system), this action will not cause an adverse effect.

Depending upon the nature of your project, it may be that a determination of “no adverse effect” is reached through mutual agreement of all consulting parties through the creation of an agreement document. This agreement document would detail specific conditions to resolve minor adverse effects with affirmative conditions such that the assessment of the overall undertaking would not result in a finding of “adverse effect”. There are no clear guidelines for this variety of “no adverse effect” determination. This situation may be considered on a case-by-case basis. As well, this outcome may be reached through negotiation after you submit your § 106-review materials.

Fourth, your project may have an adverse effect on historic properties within your APE. You must identify the adverse effects. You may specify a plan to address these adverse affects through mitigation. Also, you may describe project alternatives that would not result in adverse effects to historic properties, stating why these alternatives were rejected.

However, when your project causes an adverse effect to historic properties, a formal memorandum of agreement (MOA) must be negotiated, drafted, and executed between all necessary consulting parties, any parties invited by you and the SHPO to participate, and any other parties having responsibilities under the terms of the agreement. Finally, the ACHP shall be invited to participate in consultation.

## **NHPA and ACHP Regulations Notes**

You must ensure that all appropriate parties, including the public, be afforded every opportunity to comment on your undertaking—in a manner appropriate to the size and scope of the undertaking, its likelihood to affect historic properties, and to the extent to which it actually may affect historic properties. Consultation is required at every major decision-making point in the § 106-review process.

Submitting your project review materials to our office does not mean necessarily that you have complied with all provisions of the NHPA or the ACHP's regulations. You must ensure that you have fulfilled your responsibilities in accordance with all relevant local, state and federal laws, rules and regulations.