

## Additional Information about the Davis-Bacon Act, the Americans with Disabilities Act, and Section 106 of the National Historic Preservation Act

All NEH-funded projects involving construction, renovation, repair, rehabilitation, or ground or visual disturbances (including projects for archaeological field work in the United States) must comply with federal laws on wage rates, disability rights, and historic preservation. Such projects may therefore require extra documentation as well as an extra review before NEH can release any federal funds. Applicants should familiarize themselves with the requirements described below; NEH cannot release any grant funds until these federal requirements are met.

### **I. Davis-Bacon Requirements**

Institutions using NEH funds for projects involving construction, renovation, repair, rehabilitation, or ground or visual disturbances must comply with the [Davis-Bacon Act](#). Applicants must therefore take into account the effect of the Davis-Bacon Act on costs. Additional information is available [here](#). Applicants for such projects should affirm in the proposal that they will meet the requirements of the Davis-Bacon Act.

### **II. Americans with Disabilities Act**

Article 26 (e) of NEH's General Terms and Conditions for Awards requires grant recipients and subrecipients to adhere to the [Americans with Disabilities Act of 1990](#) (ADA). Title III of the ADA covers places of public accommodation (such as museums, libraries, and educational institutions) and includes a specific section regarding new construction and alterations in public accommodations. The website [www.ada.gov](http://www.ada.gov) provides comprehensive information that grantees can consult concerning compliance with the ADA, including the text of the legislation, the revised regulations implementing Title II and Title III of the ADA, and the 2010 ADA Standards for Accessible Design.

### **III. National Historic Preservation Act**

All NEH-funded projects involving construction, renovation, repair, rehabilitation, or ground or visual disturbances must comply with the [National Historic Preservation Act](#) (NHPA, PDF). Applicants should familiarize themselves with Section 106 of the NHPA and its implementing regulations.

**Section 106 of the NHPA: Prior to the expenditure of any federal funds**, section 106 requires NEH to review the effects of projects offered NEH funding on historic properties that are listed or eligible for listing in the National Register of Historic Places. When applicable, NEH must also provide the Advisory Council on Historic Preservation (ACHP) an opportunity to comment on such projects **prior to the expenditure of any federal funds**.

To understand and navigate the Section 106 review process, applicants should familiarize themselves with the Section 106 materials available [here](#). There is no formula for how long a given Section 106 review may take, so applicants should build sufficient time into their project plans to allow for a potentially lengthy review. NEH does not formally initiate a Section 106 review until it offers support for a project. However, applicants should know that **an applicant offered a Collaborative Research grant cannot begin any work involving construction, renovation, repair, rehabilitation, or ground or visual disturbances—and that NEH cannot release any federal funds—until NEH concludes its Section 106 review**.

To ensure that a Section 106 review of a project proceeds smoothly, take the following steps **before submitting a Collaborative Research application for archaeological field work in the United States**:

1. Contact your State Historic Preservation Officer (SHPO) and/or your Tribal Historic Preservation Officer (THPO) about your project. Once you have initiated contact, you should then provide the Collaborative Research program ([collaborative@neh.gov](mailto:collaborative@neh.gov)) with the name and contact information of the person in the SHPO/THPO office who will be assisting NEH with its review.
2. Request a written determination from the SHPO/THPO, which indicates the following:
  - whether there are any properties near the project site that are listed or eligible for listing in the National Register;
  - if there are historic properties, how the NEH-funded project would affect them; and
  - if the effects would be adverse, how they might be avoided, minimized, or mitigated.

To facilitate this determination, applicants should provide the following to the SHPO/THPO (with copies to NEH):

- *A written description of the project.* The description should include the proposed use(s) for the property and the scope of the proposed construction, renovation, repair, rehabilitation, or ground or visual disturbance.
- *A map, photograph, or drawing clearly demarcating the project's Area of Potential Effects (APE).* The APE is the geographic area within which a project may directly or indirectly affect historic properties. To determine the APE, applicants should consider all locations in which project activities could cause ground, visual, or audible disturbances, or changes in public access, traffic patterns, or land use.
- *Descriptions of all properties in the APE that are listed in the National Register, and descriptions and evaluations of all other properties in the APE that might be eligible for listing (regardless of age), when the National Register criteria are taken into account. (See [36 C.F.R. Part 60](#) and [36 C.F.R. Part 63](#).)* Descriptions should be based on background research on historic properties, oral history interviews, field surveys and/or investigations, and past planning, research, and studies. They should include information such as a property's location, the year of its construction (if a structure), and previous ownership.
- *A description of the NEH-funded project's effects on historic properties.* A project affects a historic property if it has the potential to alter the characteristics that qualify the property for inclusion in or eligibility for the National Register.
- *An explanation of why the criteria for an adverse effect—listed in [36 C.F.R. § 800.5\(a\)\(1\)](#)—were found applicable or inapplicable, including any conditions*

*or future actions that might avoid, minimize, or mitigate adverse effects.*  
Adverse effects to historic properties include physical destruction, alteration, or removal of a property.

If the proposed project involves construction, renovation, repair, rehabilitation, or ground or visual disturbances of any kind, the applicant must provide NEH with copies of the documents that the applicant submitted to the SHPO/THPO. Many SHPOs and THPOs will not render a final determination until NEH offers the Collaborative Research grant, so the written determination is not required for the application. All that is required at the application stage is copies of the applicant's request (and all supporting materials) to the SHPO/THPO for a determination on the items listed in number 2 above. Include these materials in the Collaborative Research application package.

The SHPO/THPO may request additional documents that will assist him or her with the written determination, and applicants should be able and ready to provide the SHPO/THPO with any such information. Applicants must also provide NEH with all information provided to and received from the SHPO/THPO.

**NOTE:** A letter from the SHPO/THPO that only provides support for an applicant's project will not suffice as a written determination.

3. Submit an archaeological survey for the APE to NEH. If you do not include the survey with your application and later receive a Collaborative Research grant offer, NEH's Section 106 review of your project will be delayed until you have submitted the survey to NEH. Although an archaeological survey is not required at the application stage, NEH must receive the survey to complete its Section 106 review.
4. Submit a list containing the names of all consulting parties and their contact information, including titles, mailing addresses, and e-mail addresses. Consulting parties include federally recognized tribes, Native Hawaiian organizations, state and local governments, and individuals and organizations with a legal or economic relationship to a project or property (for example, historic societies or commissions).

**NOTE:** If a project is offered funding, NEH will contact the consulting parties and invite them to consult and comment on the project. NEH will also ask those receiving offers of Collaborative Research grants for archaeological field work in the United States to post public notices about their projects through appropriate media (for example, newspapers, local post offices and libraries, the applicant's website, etc.). The comment period generally lasts thirty days, depending on the scope of a project.

NEH's Section 106 review usually results in one of the following findings and actions:

1. No historic properties or No effect on historic properties: If NEH finds that there are either no historic properties or that the project will have no effect on historic properties, it will notify the SHPO/THPO of that finding. If the SHPO/THPO does not object within thirty days after receiving the letter, NEH is generally permitted to release grant funds.
2. Project's effects indeterminable: If NEH cannot fully determine a project's effects on historic properties, NEH will continue consultations, draft a programmatic

agreement (PA), and invite the Advisory Council on Historic Preservation (ACHP) to consult on the PA. If the SHPO/THPO and other parties accept the PA, NEH is generally permitted to release grant funds (after the PA is filed with the ACHP).

3. No adverse effects to historic properties: If NEH finds that the project will not adversely affect historic properties, it will notify the SHPO/THPO and consulting parties of NEH's findings. If the SHPO/THPO or any of the consulting parties do not object, NEH is generally permitted to release grant funds.
4. Adverse effects to historic properties: If NEH finds that a project will adversely affect historic properties, NEH will continue consultations, seek ways to mitigate or resolve adverse effects, and execute a memorandum of agreement (MOA). If the SHPO/THPO and other parties to the MOA agree to it, NEH is generally permitted to release grant funds (after the MOA is filed with the ACHP).

More information on the Section 106 review process, the required documentation, and the responsibilities of an applicant prior to and during the Section 106 review is available [here](#). You can find answers to frequently asked questions about Section 106 [here](#). You can also contact the NEH Federal Preservation Officer by e-mail at [FPO@neh.gov](mailto:FPO@neh.gov) (be sure also to send the message to [collaborative@neh.gov](mailto:collaborative@neh.gov)), by phone at 202-606-8570, or by mail at Federal Preservation Officer, Division of Preservation and Access, National Endowment for the Humanities, 400 Seventh Street, S.W., Washington, D.C. 20506.