

Appendix E – Historic Property Screening Process

Background

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of Federal “undertakings”, such as the issuance of this permit, on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. To address any issues relating to historic properties in connection with the issuance of this permit, EPA has developed the screening process in this appendix that enables construction operators to appropriately consider the potential impacts, if any, of their installation of stormwater controls on historic properties and to determine whether actions can be taken, if applicable, to mitigate any such impacts. Although the coverages of individual construction sites under this permit do not constitute separate Federal undertakings, the screening process in this appendix provides an appropriate site-specific means of addressing historic property issues in connection with EPA’s issuance of the permit.

Key Terms

Historic property- prehistoric or historic districts, sites, buildings, structures, or objects that are included in or eligible for inclusion in the National Register of Historic Places, including artifacts, records, and remains that are related to and located within such properties

SHPO – The State Historic Preservation Officer for a particular state

THPO or Tribal representative – The Tribal Historic Preservation Officer for a particular Tribe or, if there is no THPO, the representative designated by such Tribe for NHPA purposes

Instructions for All Construction Operators

You are required to follow the screening process in this appendix to determine if your installation of stormwater controls on your site has the potential to cause effects to historic properties, and whether or not you need to contact your SHPO, THPO, or other tribal representative for further information. You may not submit your NOI until you have completed this screening process. The following four steps describe how applicants can meet the historic property requirements under this permit:

Step 1 *Are you installing any stormwater controls that require subsurface earth disturbance?*

The first step of the screening process is to determine if you will install stormwater controls that cause subsurface earth disturbance. The installation of the following types of stormwater controls require subsurface earth disturbance:

- Dikes
- Berms
- Catch Basins
- Ponds
- Ditches
- Trenches
- Culverts
- Channels
- Perimeter Drains

- Swales

Note: This list is not intended to be exhaustive. Other stormwater controls that are not on this list may involve earth-disturbing activities and must also be examined for the potential to affect historic properties.

Note: You are only required to consider earth-disturbing activities related to the installation of stormwater controls in the NHPA screening process. You are not required to consider other earth-disturbing activities at the site. If you are installing one of the above stormwater controls or another type of control that requires subsurface earth disturbance, your project has the potential to have an effect on historic properties. If this is the case, then you must proceed to Step 2.

If you are not installing one of the above stormwater controls or another type of control that requires subsurface earth disturbance, then you may indicate this on your NOI, and no further screening is necessary. During the 14-day waiting period after submitting your NOI, the SHPO, THPO, or other tribal representative may request that EPA hold up authorization based on concerns about potential adverse impacts to historic properties. EPA will evaluate any such request and notify you if any additional measures to address adverse impacts to historic properties are necessary.

Step 2 *Have prior professional cultural resource surveys or other evaluations determined that historic properties do not exist, or have prior disturbances precluded the existence of historic properties?*

If you are installing a stormwater control that requires subsurface earth disturbance, you must next determine if it has already been determined that no historic properties exist on your site based on prior professional cultural resource surveys or other evaluations, or that the existence of historic properties has been precluded because of prior earth disturbances.

If prior to your project it has already been determined that no historic properties exist at your site based on available information, including information that may be provided by your applicable SHPO, THPO, or other tribal representative, then you may indicate this on your NOI, and no further screening steps are necessary. Similarly, if earth disturbances that have occurred prior to your project have eliminated the possibility that historic properties exist on your site, you may indicate this on your NOI, and no further screening steps are necessary. After submitting your NOI, and during the 14-day waiting period, the SHPO, THPO, or other tribal representative may request that EPA hold up authorization based on concerns about potential adverse impacts to historic properties. EPA will evaluate any such request and notify you if any additional measures to address adverse impacts to historic properties are necessary.

If neither of these circumstances exists for your project, you must proceed to Step 3.

Step 3 *If you are installing any stormwater controls that require subsurface earth disturbance, you must determine if these activities will have an effect on historic properties.*

If your answer to the questions in Steps 1 and 2 is "no", then you must assess whether your earth-disturbing activities related to the installation of stormwater controls will have an effect on historic properties. This assessment may be based on historical sources, knowledge of the area, an assessment of the types of earth-disturbing activities you are engaging in, considerations of

any controls and/or management practices you will adopt to ensure that your stormwater control-related earth-disturbing activities will not have an effect on historic properties, and any other relevant factors. If you determine based on this assessment that earth disturbances related to the installation of your stormwater controls will not cause effects to historic properties, you may indicate this on your NOI, and document the basis for your determination in your SWPPP and no further screening steps are necessary. In this case you must also attach a copy of your site map to your NOI. After submitting your NOI, and during the 14-day waiting period, the SHPO, THPO, or other tribal representative may request that EPA hold up authorization based on concerns about potential adverse impacts to historic properties. EPA will evaluate any such request and notify you if any additional measures to address adverse impacts to historic properties are necessary.

If none of the circumstances in Steps 1-3 exist for your project, you must proceed to Step 4.

Step 4: *If you are installing any stormwater controls that require subsurface earth disturbance and you have not satisfied the conditions in Steps 1-3, you must contact and consult with the appropriate historic preservation authorities.*

Where you are installing stormwater controls that require subsurface earth disturbance, and you cannot determine in Step 3 that these activities will not have effects on historic properties, then you must contact the relevant SHPO, THPO, or other tribal representative to request their views as to the likelihood that historic properties are potentially present on your site and may be impacted by the installation of these controls.

Note: Addresses for SHPOs and THPOs may be found on the Advisory Council on Historic Preservation's website (www.achp.gov/programs.html). In instances where a Tribe does not have a THPO you should contact the appropriate Tribal government office designated by the Tribe for this purpose when responding to this permit eligibility condition.

You must submit the following minimum information in order to properly initiate your request for information:

1. Project name (i.e., the name or title most commonly associated with your project);
2. A narrative description of the project;
3. Name, address, phone and fax number, and email address (if available) of the operator;
4. Most recent U.S. Geological Survey (USGS) map section (7.5 minute quadrangle) showing actual project location and boundaries clearly indicated; and
5. Sections of SWPPP site map (see Part 7.2.6) that show locations where stormwater controls that will cause subsurface earth disturbance will be installed (see Step 1).

Without submitting this minimum information, you will not have been considered to have properly initiated your request. You will need to provide the SHPO, THPO, or other tribal representative a minimum of 15 calendar days after they receive these materials to respond to your request for information about your project. You are advised to get a receipt from the post office or other carrier confirming the date on which your letter was received.

If you do not receive a response within 15 calendar days after receipt by the SHPO, THPO, or other tribal representative of your request, then you may indicate this on your NOI, and no further screening steps are necessary. Or, if the applicable SHPO, THPO, or other tribal representative responds to your request with an indication that no historic properties will be affected by the installation of stormwater controls at your site, then you may indicate this on your NOI, and no further screening steps are necessary. After submitting your NOI, and during the 14-day waiting period, the SHPO, THPO, or other tribal representative may request that EPA hold up authorization based on concerns about potential adverse impacts to historic properties. EPA will evaluate any such request and notify you if any additional measures to address adverse impacts to historic properties are necessary.

If within 15 calendar days of receipt of your request the applicable SHPO, THPO, or other tribal representative responds with a request for additional information or for further consultation regarding appropriate measures for treatment or mitigation of effects on historic properties caused by the installation of stormwater controls on your site, you must comply with this request and proceed to Step 5.

Step 5: Consultation with your applicable SHPO, THPO, or other tribal representative.

If, following your discussions with the appropriate historic preservation authorities in Step 4, the applicable SHPO, THPO, or other tribal representative requests additional information or further consultation, you must respond with such information or to consult to determine impacts to historic properties that may be caused by the installation of stormwater controls on your site and appropriate measures for treatment or mitigation of such impacts. If as a result of your discussions with the applicable SHPO, THPO, or tribal representative, you enter into, and comply with, a written agreement regarding treatment and/or mitigation of impacts on your site, then you may indicate this on your NOI, and no further screening steps are necessary.

If, however, agreement on an appropriate treatment or mitigation plan cannot be reached between you and the SHPO, THPO, or other tribal representative within 30 days of your response to the SHPO, THPO, or other tribal representative's request for additional information or further consultation, you may submit your NOI, but you must indicate that you have not negotiated measures to avoid or mitigate such effects. You must also include in your SWPPP the following documentation:

1. Copies of any written correspondence between you and the SHPO, THPO, or other tribal representative; and
2. A description of any significant remaining disagreements as to mitigation measures between you and the SHPO, THPO, or other tribal representative.

After submitting your NOI, and during the 14-day waiting period, the SHPO, THPO, ACHP or other tribal representative may request that EPA place a hold on authorization based upon concerns regarding potential adverse effects to historic properties. EPA, in coordination with the ACHP, will evaluate any such request and notify you if any additional measures to address adverse effects to historic properties are necessary.