

Attachment 1: Coordinating NHPA 106 and NEPA

National Environmental Policy Act (NEPA)

National Historic Preservation Act (NHPA) Section 106

Tribal Consultation

Making it Work

Project Formulation

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| <ul style="list-style-type: none"> ➤ Identify the purpose and need for action ➤ Conduct internal scoping ➤ Describe the proposed action and preliminary alternatives ➤ Identify preliminary issues for analysis <ul style="list-style-type: none"> i. Determine appropriate form of National Environmental Policy Act (NEPA)ⁱ compliance Categorical Exclusion (CX)ⁱⁱ, Determination of NEPA Adequacy (DNA)ⁱⁱ, Environmental Assessment (EA)ⁱⁱⁱ or Environmental Impact Statement (EIS) ➤ Develop a plan to involve the public | <p><u>Initiate 106 Process</u></p> <ul style="list-style-type: none"> ➤ Establish undertaking and potential to cause effects ➤ Identify potentially affected State Historic Preservation Officers (SHPO) and/or Tribal Historic Preservation Officer (THPO), tribes and consulting parties ➤ Develop a plan to involve the public ➤ Begin Section 106 consultation per established protocols when applicable | <ul style="list-style-type: none"> ➤ Establish list of Indian tribes potentially affected ➤ Develop a plan to consult with affected Indian tribes ➤ Notify Indian tribes of opportunity to consult | <ul style="list-style-type: none"> ➤ Incorporate NHPA Section 106 and tribal consultation into the overall project schedule and tracking system. |
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External Scoping

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| <ul style="list-style-type: none"> ➤ Publish/post notification of scoping (NOI, press release, website, etc.) ➤ Conduct scoping ➤ Refine issues for analysis ➤ Define scope of analysis ➤ Refine alternatives ➤ Identify data needs | <p><u>Identify Historic Properties</u></p> <ul style="list-style-type: none"> ➤ Refine Area of Potential Effect (APE) in consultation with SHPO/THPO ➤ Seek information from consulting parties on historic properties in the APE ➤ Notify the public and invite their comments ➤ Review new and existing information and identify data gaps ➤ Develop strategy to complete resource identification | <ul style="list-style-type: none"> ➤ Initiate staff level and government-to-government consultation with Indian tribes. ➤ Gather information from Indian tribes to assist in identifying properties of religious and cultural significance | <ul style="list-style-type: none"> ➤ Include the project in all staff level and government-to-government consultation meetings. ➤ Include language in any notification of scoping (including NOI) stating it partially fulfills NHPA 106 public notification requirements. ➤ Ensure all public contacts and scoping meetings include NHPA information. ➤ Use scoping and tribal |
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consultation to identify historic resources and key issues, especially landscape level concerns that could pose challenges.

➤ Document everything.

Prepare Preliminary/Draft NEPA Doc

➤ **Include:**

- **Proposed Action**
- **Alternatives**
- **Affected Environment**
- **Environmental Consequences (direct, indirect and cumulative effects)**
- **Mitigation**

➤ Complete resource identification and eligibility determination, make determination of effect or no effect, notify all consulting parties and invite their views

➤ Consider views of consulting parties and public on effects

Assess Adverse Effects

➤ Assess and determine whether effects are adverse or not. Invite the Advisory Council on Historic Properties (ACHP) to participate as appropriate and according to the state protocol under the PA

Resolve Adverse Effects

➤ Consult to resolve potential adverse effects; prepare draft Memoranda of Agreement (MOA) or Programmatic Agreement (PA)

➤ Continue consultation with Indian tribes to complete identification of resources and effects of proposed action.

➤ Resolve potential adverse effects to resources of concern; invite tribes to be a party to the Memoranda of Agreement (MOA) or Programmatic Agreement (PA) that will conclude the NHPA 106 process.

➤ Include any information obtained from the NHPA Section 106 and tribal consultation in the draft NEPA document sections on affected environment, impacts, and mitigation for public review and comment and to help meet Section 106 documentation requirements

➤ Include the draft MOA or PA in the Appendix of Draft NEPA document, protecting sensitive information from tribes

➤ Update the public on the status of NEPA, NHPA 106 and tribal consultation on State & Field Office Web Sites

➤ Keep tribes informed by including on the agenda at all regular meetings with tribes

Release Preliminary/Draft NEPA Doc

➤ **Publish/post notification of draft (NOA, press release, website, etc.)**

➤ Send draft MOA/PA and documentation required by NHPA

➤ Consult on the proposed MOA/PA that will conclude the

➤ State that notices of draft NEPA documents (including

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➤ Receive comments on the draft	Section 106 to SHPOs, tribes, and consulting parties	106 process and determine whether tribes will be primary signatories or concurring signatories	NOA) partially fulfills requirements of NHPA Section 106; combine mailing of draft NEPA document with coordination of draft MOA/PA ➤ Review NEPA comments to highlight unresolved cultural, historic and/or tribal issues
Prepare Final NEPA Doc			
➤ Respond to comments	➤ Respond to comments	➤ Respond to tribal comments and concerns	➤ Include the Draft Final MOA or PA in the Appendix of the final NEPA document
➤ Modify draft NEPA document as necessary	➤ Modify draft MOA/PA as necessary		
Release Final NEPA Doc			
➤ Publish/post notification of final NEPA document (NOA, press release, website, etc.)	➤ Sign MOA/PA (prior to the Decision Record or Record of Decision).		
Sign Decision Record			
➤ Document the decision.			➤ Include NHPA Section 106 mitigation in the decision record

ⁱ For the purposes of this Side-by-Side, the NEPA process has been generalized into stages without consideration for specific type of NEPA documentation.

ⁱⁱ Section 106 of the NHPA and Tribal Consultation provide statutory obligations independent of the requirements of NEPA. Because CXs and DNAs provide limited opportunities for public and tribal involvement, effective coordination between the NEPA process and Section 106 of the NHPA and Tribal Consultation may not always be possible.

ⁱⁱⁱ Some form of public involvement is required in the preparation of all EAs; the type and extent is up to the discretion of the authorized officer. Examples include: external scoping, public notification before or during preparation of EA, public meetings, or public review and comment on EA prior to it be finalized. As a consequence, Section 106 of the NHPA and Tribal Consultation may require more public involvement and consultation than is afforded by an EA.