Transportation Streamlining, Tribal Consultation and Section 106

ACHP Perspective
Section 106

- Requires Federal agencies to take into account the effects of their actions on historic properties.

- Federal agencies must afford the Advisory Council on Historic Preservation a reasonable opportunity to comment.
Historic Properties are:

- Sites
  - Properties of traditional religious and cultural value to Indian tribes and Native Hawaiian Organizations
- Buildings
- Structures
- Districts
- Objects
Section 106 Participants

- Federal agencies
- Advisory Council
- Consulting Parties: SHPO/THPO/Tribe; applicants; local government, Tribes & NHO’s that attach religious and cultural significance; additional consulting parties.
- Public
What’s a SHPO/THPO?

- SHPO established in NHPA (1966)
- THPO authorized to assume SHPO functions on tribal lands in 1992 amendments to NHPA
36 CFR Part 800

- Establishes procedures
- 4 Step process:
  - Initiate consultation
  - Identification of historic properties
  - Determining project effects
  - Resolving adverse effects
- Recognizes government-to-government relationship
Tribal Consultation Required in:

- Identification of historic properties;
- Applying the NR Criteria for evaluation;
  - Tribes have “special expertise”
- Applying the criteria of adverse effect;
- Finding of no adverse effect;
- Resolution of adverse effects.
How well is this working?

- Delegation of responsibilities to States
- Not all States have process or list of contacts for tribal consultation
- Tribes are overwhelmed with requests
- Travel expenses and the costs of participating in consultation can be prohibitive
Stewardship is...

- Promoting actions that show FHWA is responsible steward of the environment.
- Seek partnerships that encourage broader mitigation strategies.
- Improving processes that influence outcomes.

- From FHWA S&S website
Streamlining

- Changes to 36CFR Part 800 were intended to
  - streamline Section 106 consultation
    AND
  - address new requirements for tribal consultation in the 1992 amendments to the NHPA

- Is tribal consultation antithetical to streamlining?
Presents opportunities and Challenges.

Categorical Exclusions: delegation to States

Pilot Programs for delegation

Government to government consultation is retained by FHWA

Transportation Planning --- new consultation requirements
Tools for Better Stewardship and Streamlining

- MOUs or MOAs between agencies and Indian tribes establishing protocols.
- Statewide Programmatic Agreements developed in consultation with tribes.
- Improved communications (e.g. email)
- Assistance with travel costs
- Early initiation of consultation