

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?

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- ◆ 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