



**Section 106 Review for Powerline  
Operations & Maintenance Activities  
on NFS Lands in WA and OR**  
**(Excluding Bonneville Power Administration (BPA) Lines and FERC-authorized Lines<sup>1</sup>)**

## **Introduction**

The purpose of this appendix is to describe the National Historic Preservation Act (NHPA) Section 106 review process the Forests and powerline companies will follow for powerline operations and maintenance activities. This document should be attached to every powerline Operation & Maintenance Plan reviewed and approved by the FS (Excluding Bonneville Power Administration (BPA) Lines and FERC-authorized Lines).

### **A. Regulatory Overview**

#### *National Historic Preservation Act*

The Forest Service is mandated to comply with the NHPA<sup>2</sup> and its implementing regulations, 36 CFR 800. The NHPA requires the Forest Service, as well as other federal agencies, to consider the impact of their actions on historic properties and provide the Advisory Council on Historic Preservation (AChP) with an opportunity to comment on projects before implementation. Because of Section 106, the Forest Service must assume responsibility for the consequences of its actions on historic properties (including approving powerline O & M activities) and be publicly accountable for its decisions.

#### *Section 106 of NHPA*

NHPA Section 106 is concerned with Federal undertakings. A Federal undertaking is a project, activity, or program either funded, permitted, licensed, or approved by the Forest Service. Undertakings may take place either on or off federally controlled property and include new and continuing projects and activities or programs funded in whole or in part and under the direct or indirect jurisdiction of the Forest Service. Section 106 requires the Forest Service to consider the effects of its undertakings on historic properties. In addition, the Forest Service is required to consult on the Section 106 process for each undertaking with State Historic Preservation Offices (SHPO), Tribal Historic Preservation Offices (THPO), and Indian Tribes. Powerline operation and maintenance activities may fall under the definition of an undertaking.

#### *Statewide Programmatic Agreements & Applicability*

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<sup>1</sup> Routine O&M for powerlines associated with FERC licensed hydropower projects that are covered by a FS special use authorization would fall under this guidance, but those primary powerlines on NFS lands that are authorized by FERC (and not a SUA) would be subject only to the FERC license's HPMP requirements.

<sup>2</sup> 54 U.S.C. 306101.

The Pacific Northwest Region (Region 6) has an Oregon Programmatic Agreement (Oregon PA)<sup>3</sup> and a Washington Programmatic Agreement (Washington PA)<sup>4</sup> that may be applicable to some of the powerline O & M activities. These PAs describe how the Section 106 process can be applied to certain classes of undertakings, provided the criteria is met, as determined by the Forest Heritage Professional (FHP).

Operating and maintenance activities eligible for review under one of the PAs require less documentation and streamlined consultation with Tribes and the SHPOs. When extraordinary circumstances exist, complex issues warrant, or when the standard measures contained in the PA cannot or will not be implemented, the Forests shall revert to standard procedures as prescribed by 36 CFR 800.

### *Special Use Authorizations*

Special Use Authorizations (SUAs) are issued by National Forests to powerline companies and allow for the operations and maintenance of the permitted corridor, powerlines, and related facilities on National Forest System (NFS) land. The Oregon PA and Washington PA address some of these activities, such as powerline O&M, that occur on NFS land that are subject to Section 106 review. Each authorized powerline company throughout the 17 Forests within Region 6 is required to submit an operating plan that includes procedures for vegetation management, facility inspection, and O & M activities required to operate and maintain safe and reliable electric and ancillary facilities. The powerline company's routine O & M activities may be considered undertakings subject to NHPA Section 106 review and may be covered by the PAs.

## **B. Definitions**

**Advisory Council of Historic Preservation (AChP)** means the entire Council, a Council member, or an employee designated to act for the Council.

**Affected Tribes** is any Indian Tribe that is affected by any agency undertaking).

**Agency Official/Authorized Officer** (Regional Forester, Forest Supervisor, Area Manager, or District Ranger) the Forest Service Line Officer responsible for legal compliance and land management decisions on a Forest.

**Archeological Resources Protection Act (ARPA)**- The Archaeological Resources Protection Act of 1979, is a federal law of the United States passed in 1979 and amended in 1988. It governs the excavation of archaeological sites on federal and Native American lands in the United States, and the removal and disposition of archaeological collections from those sites.

**Area of Potential Effects (APE)** [36 CFR§ 800.16 (d)] the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the

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<sup>3</sup> The 2004 Programmatic Agreement Between the United States Department of Agriculture Pacific Northwest Region (Region 6), The Advisory Council on Historic Preservation, and the Oregon State Historical Preservation Officer Regarding Cultural Resources Management in the State of Oregon by the USDA Forest Service

<sup>4</sup> The Pacific Northwest Region (Region 6), The Advisory Council on Historic Preservation, and 2) the Washington Department of Archeology and Historic Preservation Regarding Cultural Resource Management of the National Historic Preservation Act for Undertakings on National Forest System Lands in the State of Washington (Washington PA).

scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

**Case by Case**- Are those projects that need individual review on a case-by-case basis, and do not meet the criteria for the standard measures identified in the appendices in the OR or WA PAs.

**Consultation** [36 CFR§ 800.16 (f)] means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process.

**Cultural Resources Professional**- Is a professional consultant who meets the Secretary of the Interior Standards and Guidelines for Professional Qualification Standards (48 FR 44738-44739). Consultant responsibilities do not include formally approving Section 106 documents on behalf of the Forest, making official agency findings, signing consultation letters, or otherwise functioning as an agency official for the purposes of Section 106.

**Effect** [36 CFR§ 800.16 (i)] means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

**Forest Heritage Professional (FHP) or Heritage Staff** as defined by FSM 2360.91 and FSH 2309.12 (04.1) is a Forest Service staff or advisory position with education and expertise in archaeology, history, cultural resource management, or related disciplines. They provide professional recommendations and services to help land managers meet their Heritage Program responsibilities.

**Historic Property**- [36CFR 800.16 (l)] means any pre-contact or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, features, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian Tribe or native Hawaiian organization and that meet the National Register criteria per the definition in 36 CFR§ 800.16(1). Unevaluated cultural resources will be treated as eligible for the NRHP (FSH 2309.12 (30.33)).

**Inventory** (i.e., Project Inventory, Heritage Inventory, and Archaeological Survey) is a systematic, detailed examination of an area designed to gather information about the number, location, condition, and distribution of historic properties within an undertaking's APE. This examination should consider the full range of historic properties.

**Limited Review**- A review for undertakings that have limited potential to affect historic properties (Appendix A OR PA, Appendix B WA PA).

**Memorandum of Agreement (MOA)**- is a legally binding document that commits an agency both by statute and by federal regulation to carry out the undertaking in accordance with the terms of the agreement in satisfaction of its responsibilities under Section 106

**National Register of Historic Places (NRHP)**- is the official list of the Nation's historic places worthy of preservation. Authorized by the National Historic Preservation Act of 1966.

**OR SHPO**- Oregon State Historic Preservation Office

**State Historic Preservation Officer (SHPO)** 36CFR§800.16 (v) means the official appointed or representative designated pursuant to section 101(b)(1) of the act to administer the State historic

preservation program. For the State of Oregon- Oregon State Historic Preservation Office (OR SHPO) and for the State of Washington, the Washington State Department of Archaeology and Historic Preservation (WA DAHP) is the SHPO.

**WA DAHP**- Washington Department of Archeology and Historic Preservation (Washington SHPO)

**Undertaking** means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval per the definition in 36 CFR§ 800.16(y).

## C. Roles & Responsibilities

### a. Forest Heritage Professional

The Forest Heritage Professional (FHP) is responsible for Section 106 review of powerline O & M activities that are consistent with an approved operation plan. The FHP reviews the proposed annual schedule of work for O & M activities to determine whether it qualifies as an undertaking and whether it meets the criteria for a streamlined review process under a PA. The FHP also determines the Area of Potential Effects (APE) for the activities, reviews Archaeological Research Investigation (ARI) permits, identifies appropriate Section 106 review, and documents the final Section 106 findings. The FHP coordinates consultation with the Oregon SHPO and/or Washington DAHP, ACHP, affected Tribes and other parties on behalf of the Agency Official. The FHP can also be a point of contact for any cultural resource professional a powerline company hires to help assist with the Section 106 process.

### b. Special Uses Permit Administrator (SUPA)

The SUPA is responsible for issuance and administration of Special Use Authorizations for powerline facilities on NFS land. The SUPA coordinates with the powerline company, resource specialists on the Forest and the Authorized Officer on any actions related to the authorization. The SUPA, in coordination with the FHP, also processes ARI permits, issued to cultural resources professionals hired by powerline companies to assist in completing NHPA Section 106 requirements for O & M activities when required.

### c. Powerline Companies

The powerline company is responsible for submitting an annual schedule of work for O & M activities. The powerline company is also responsible for providing qualified cultural resources professionals hired to assist them with the NHPA Section 106 requirements for the activity, unless the local Forest Service office has determined their Heritage staff has the capacity to complete the Section 106 work under a Cost Recovery Agreement between the Forest Service and the powerline company.

### d. Cultural Resources Professional

The cultural resource professional is provided or hired by the powerline company to assist them with NHPA Section 106 requirements associated with a powerline O & M activity. Cultural Resource Professionals in the appropriate area(s) of expertise, shall conduct all actions to the professional standards referenced in 36 CFR § 800.2(a)(1) and shall meet the Secretary of the Interior's Professional Qualification Standards. The cultural resource professional is responsible for applying for an ARI permit and complying with all stipulations of the permit. All field work, documentation and reporting shall meet the requirements of the local Forest Service office and the respective SHPO.

#### **D. Archaeological Research Investigation (ARI) Permit**

ARI permits are issued under one or more of the following Acts: Antiquities Act, ARPA, or the Organic Act. The powerline company's cultural resources professional shall secure from the local Forest Service office an ARI permit prior to conducting heritage resource investigations in support of powerline O&M activities on the Forest. Activities that require testing or data recovery or other invasive resource investigations will be issued under ARPA and require an additional 30-day consultation with affected tribes. Region 6 may issue an ARI permit for multiple Forests where the permit activity crosses Forest Service administrative unit boundaries. FSM 2360, Section 2367.13. ARI permit issuance is not subject to NHPA Section 106 and is not subject to the National Environmental Policy Act (NEPA).

#### **E. Section 106 Review Procedures**

The following procedures describe how NHPA Section 106 will be implemented for routine powerline company O & M activities identified in their approved operating plans.

- 1) Submit Annual Schedule of Work to SUPA-** For Section 106 review purposes, the annual schedule of work for O & M activities should contain enough detail to distinguish between each separate activity and identify any areas of potential ground disturbance for each separate activity. The Powerline O & M Annual Project review form below indicates the type of information that will be needed by the FHP to conduct the Section 106 review. The SUPA will promptly forward the project information associated with the annual schedule of work to the FHP.
- 2) Forest Initial Project Review-** The FHP will review the annual schedule of work to determine if the proposed activities qualify as an undertaking. If the activity is an undertaking, the FHP will determine the APE. The FHP will also determine if the activity qualifies for a streamlined Section 106 process under a PA Appendix. For O & M activities in which a PA Appendix applies, the FHP will determine whether inspection or monitoring is required for the project. For activities that do not qualify under a PA Appendix, the FHP will determine the level of inventory required for the project. The FHP will endeavor to respond to the SUPA with the findings from their initial review within 10 calendar days.

The following are activities (not inclusive) may qualify for a streamlined review process under the current OR and/or WA PAs provided the PA stipulations are met:

- Powerline corridor mowing to prevent encroachment by brush species and establishment of noxious weeds.

- Installation of power pole or tower replacement when placed in the same location of previously disturbed ground.
- Recurrent brushing (hand, machine, chipping) activities to control vegetation within clearing limits of power line corridors.
- Upgrading or adding new power lines to existing poles with no change in pole configuration or new ground disturbance

It should be noted; many of the powerline corridors within the region have not been previously surveyed. In general, activities that involve new ground disturbance in areas that have not had previous adequate archeological inventory or does not comply with Forest's established inventory design may require inventory, especially if the activity is located in an area considered to be high probability for the presence of cultural resources.

- 3) **Further Inventory-** If the FHP determines that an activity described in the annual schedule of work needs further inventory and the Forest Service is unable to complete the needed inventory through a cost recovery due to work load capacity, the powerline company will be required to provide a cultural resources professional to complete the inventory. The cultural resources professional will request an ARI Permit from the Forest where the activity will occur at least 60-days prior to proposed field work. The cultural resources professional will assist the powerline company with Section 106 compliance and will work with the FHP to ensure compliance with the Forest's established inventory design. The FHP will conduct tribal consultation prior to inventory to be conducted, as appropriate. The cultural resources professional will contact the FHP prior to the start of any inventory work to review Forest's established inventory design and review additional heritage files not available at OR SHPO or WA DAHP.
- 4) **Cultural Resources Professional Report Review by FHP-** The powerline company's cultural resources professional will submit electronically the inventory report and GIS shapefiles to the FHP, who will notify the SUPA when the information is received. The FHP will certify or request edits on the report's findings, determinations, and recommendations made by the cultural resources professional regarding the identification and management of historic properties. The Finding of Effects to historic properties will be determined in accordance with the procedures in the respective Oregon or Washington PA or most current versions.

If the cultural resources professional's report meets the stipulations in the PA (or most current versions), the FHP will sign a PA approval form and email it to the powerline company, copying the SUPA and cultural resources professional indicating that the Section 106 process has been completed. Archaeological monitors may be required for some projects depending upon the findings as well as the implementation of site protection measures. For cultural resources professional reports that result in any determinations of eligibility and a finding of effect, the Forest will follow the process in their respective statewide PA.

**Consultation with the affected Tribes, the SHPO and the ACHP is the responsibility of the agency and may take 60 days or more.**

- 5) **Adverse Effect-** If an Adverse Effect to historic properties is determined, the powerline company or cultural resources professional, in coordination with the Forest Service shall consult with the SHPO/THPO and other consulting parties, including Indian tribes, to develop and evaluate alternatives or modifications to the powerline O & M that could avoid, minimize, or mitigate adverse effects on historic properties. If protection measures are identified to avoid or minimize impacts to historic properties, the powerline company will ensure that all employees and cultural resource professionals follow the protection measures for each site. If through protection measures historic properties cannot be avoided, a Memorandum of Agreement (MOA) will be developed (see [www.achp.gov](http://www.achp.gov) for more information).
- 6) **Resolution of Adverse Effects/Mitigations-** Through the MOA, mitigation measures that address the adverse effects will be developed in consultation between the tribes, appropriate SHPO, powerline company and Forest Service. Individual MOA stipulations need to be completed within one year of the execution of the MOA, unless there are unusual circumstances that would warrant a longer time period.

## **F. Inadvertent Discoveries, Emergency Undertakings, and Incident Management**

With every undertaking there is a potential for discovering previously undocumented cultural resources, including human remains. Any discovery during implementation shall be treated in accordance with 36 CFR 800.13(b) and follow procedures in the local Forest Service office's Inadvertent Discovery Plan (IDP)s. The powerline company and their cultural resources professional are responsible for obtaining the IDP through the local Forest Service office prior to commencing with any O & M work.

For emergency undertakings associated with the O & M of the powerline, the process outlined in the 36 CFR 800.12 and 36 CFR Part 78 shall be followed. It is the responsibility of the powerline company to contact the affected Forest Service office and the FHP/Heritage staff to report the emergency.

If an incident occurs, that is not addressed in the section 106 plan, the powerline company will, at a minimum, provide the Forest with the following information:

1. Notification to the FHP/Heritage staff as soon as possible (typically within 48 hours of the incident).
2. A description of the incident.
3. A description of the heritage resources involved, if known.

## POWERLINE O & M ANNUAL PROJECT PROPOSALS/ NHPA REVIEW

Instructions: Powerline company completes Sections A & B. Forest Service heritage staff completes Section C.

<b>A. INFORMATION</b>	Forest:	District(s):
Date of Request:		Proposed Implementation Date:
<b>B. PROJECT NAME &amp; DESCRIPTION</b>		
<b>Project Name &amp; Powerline Company Contact:</b>		
<b>Legal Description:</b> (Township, Range, Section):		
<b>Description of Project Location</b> (Attach map, and send GIS Shapefiles):		
<b>Project Need</b> (What is the purpose and need for the project)? :		
<b>Proposed Activities</b> (Describe all operations and activities, including staging and laydown areas, equipment that will be used and construction activities. What is the end-result? How will it be accomplished? Are there timing limitations as to when the work can be completed?)		
<b>Project Manager/ Contact Information:</b> Name & Title : _____ Email _____ Phone: _____		
<b>C. PRELIMINARY REVIEW (COMPLETED BY FOREST SERVICE FHP)</b>		
<b>Does the project qualify for review under one or more of the Programmatic Agreement Appendices?</b> Yes      No		
<b>If Yes, what Appendices apply to the project and is monitoring required?</b>		
<b>If No, what additional review is required</b> (inventory, project monitoring, Tribal and SHPO consultation, etc.)		
<b>If additional review is required how will the work be accomplished?</b>		
<input type="checkbox"/> Cost Recovery <input type="checkbox"/> Cultural Resources Contractor Contact: _____		

