



United States Department of Agriculture

Regional Heritage Program Programmatic Agreement



Forest Service

February 2020

Regional Heritage Program Programmatic Agreement

OR

Programmatic Agreement Among the USDA Forest Service, Alaska
Region, the Advisory Council On Historic Preservation, and the
Alaska State Historic Preservation Officer Regarding Heritage
Program Management on National Forests in the State Of Alaska

2017

OR

“Regional PA”



Key Definitions and Concepts

National Historic Preservation Act (NHPA)
Advisory Council on Historic Preservation (ACHP)
State Historic Preservation Office (SHPO)
Cultural Resources vs Historic Properties
National Register of Historic Places (National Register)
Federally Recognized Tribes and Alaska Native Corporations
Consultation
NHPA vs NEPA
Undertaking
Authorized Undertakings
Adverse Effect
Foreclosure

National Historic Preservation Act

- Sets the **Nation's historic preservation policies**
- Recognizes the **role of States and Tribes**
- Sets out **guidance for identifying and evaluating historic properties (Section 110)**
- Sets out **guidance for considering potential effects** to historic properties by federal undertakings **(Section 106)**
- Clarifies that costs of preservation activities are allowed as **eligible project costs**

Advisory Council on Historic Preservation

- **Independent** Federal agency that advises the President and Congress
- **All agencies are represented** on the Council
- **Must be invited to participate** under certain circumstances
- **May choose** to be a signatory to PAs & MOAs



State Historic Preservation Office

- Created to **recognize State/local interests** in historic preservation
- **Must be invited to comment** on agency decisions relating to identification of cultural resources, eligibility determinations, and effects to historic properties
- **Is always a signatory party** for Programmatic Agreements (PA) or Memoranda of Agreement (MOA)



Cultural Resource vs Historic Property

Cultural resources is the broader term that includes **all historic and precontact sites** and includes areas such as **sacred places, cultural landscapes** or other areas that may not have specific physical boundaries.



Historic Properties are a subset of cultural resources that are **listed or eligible for listing** on the National Register of Historic Places (National Register).



National Register of Historic Places

Generally 50 years old or older



(A) associated with **events** that have made a significant contribution to the broad patterns of our history

(B) associated with the lives of **persons** significant in our past

(C) embody the **distinctive characteristics** of a type, period, or method of construction, or that represent the work of a master...; .

(D) have yielded, or may be likely to yield, **information** important in prehistory or history

And meet (up to seven) integrity criteria

Location, design, setting, materials, workmanship, feeling, & association

Federally Recognized Tribes and Corporations

“An American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States”

There are 573 Federally Recognized Tribes of which 229 are in Alaska

There are 13 Regional Corporations, and 225 Village Corporations

**Tongass consults with 19 Tribes and 11 Corporations
Chugach consults with 13 Tribes and 14 Corporations**

Federally Recognized Tribes must be offered the opportunity to participate in the Section 106 process

Federally Recognized Tribes must be Consulted with on a government-to-government basis



Consultation

Consultation is defined at 36 CFR 800.16 as meaning “**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.

- **ONLY Line Officers may consult** on a Government to Government basis (FSH 1509.13) with one exception – if the Chief delegates that authority in a specific case.
- **Heritage Professionals and Tribal Relations Specialists** may work cooperatively on a day to day basis with Tribal staff, but they **do not “consult”** under the meaning of the law.
- **Non-Federally recognized Alaska Native Tribes are treated as other interested parties.**

NHPA vs NEPA

Same

Both are **process laws**

Both include **tribal consultation, and public input**

Both **evaluate effects to cultural resources**

Different

NHPA evaluates effects **only to Historic Properties**

CE's, EA's and EIS's **all require Section 106 review** prior to the Decision Document being signed.

An 'undertaking under NHPA does not require NEPA
A 'project' under NEPA always requires NHPA Section 106



Undertaking

The requirement for a Section 106 review is triggered by

A project, activity, or program...

Federally funded in whole or in part

Federal agency jurisdiction: direct or indirect
including those carried out by or on behalf of a Federal agency

Carried out with **Federal financial assistance**;
& those **requiring a Federal permit, license or approval**

Federal Money OR Federal Land OR Federal Involvement/Approval = UNDERTAKING



Authorized Undertaking (Appendix B of the PA)

Authorized Undertakings are **types of activities** that have been determined, through the **consultation process** with the SHPO, ACHP, Tribes and other interested parties, to have **no potential to affect, or adversely affect historic properties.**



Adverse Effect

An **adverse effect** will damage the historic property to the point where it is **no longer eligible** to the National Register



Foreclosure

When the agency **implements an undertaking without completing a Section 106 review**, it is called a **“foreclosure”**

ACHP can review the case and advise **the agency head** if it finds that its opportunity has been foreclosed

Foreclosures can make the agency **vulnerable to litigation**

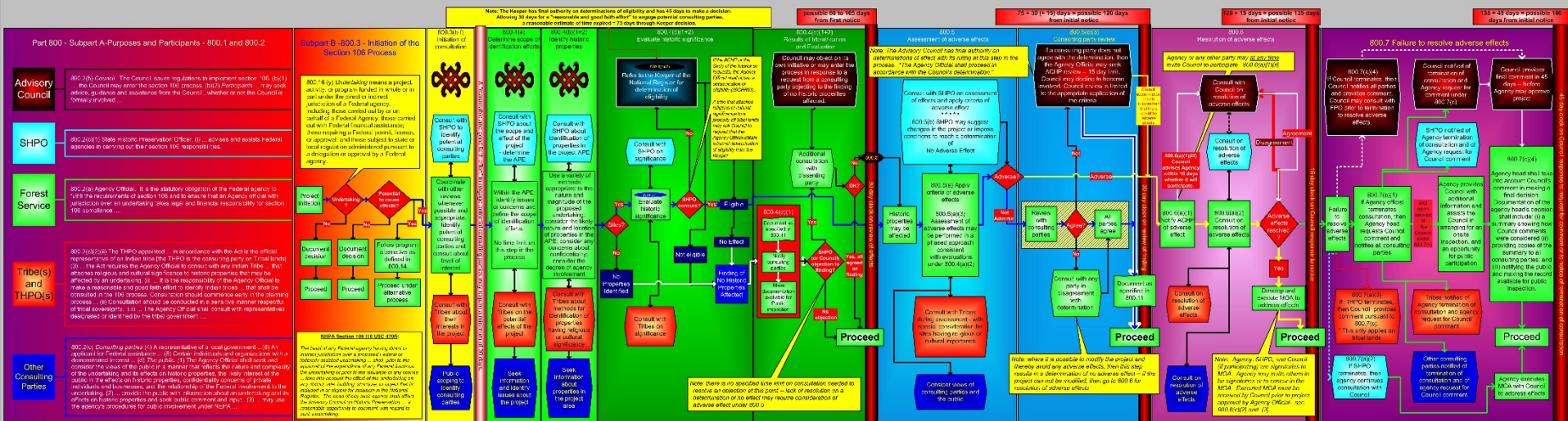


Standard Section 106 Procedures

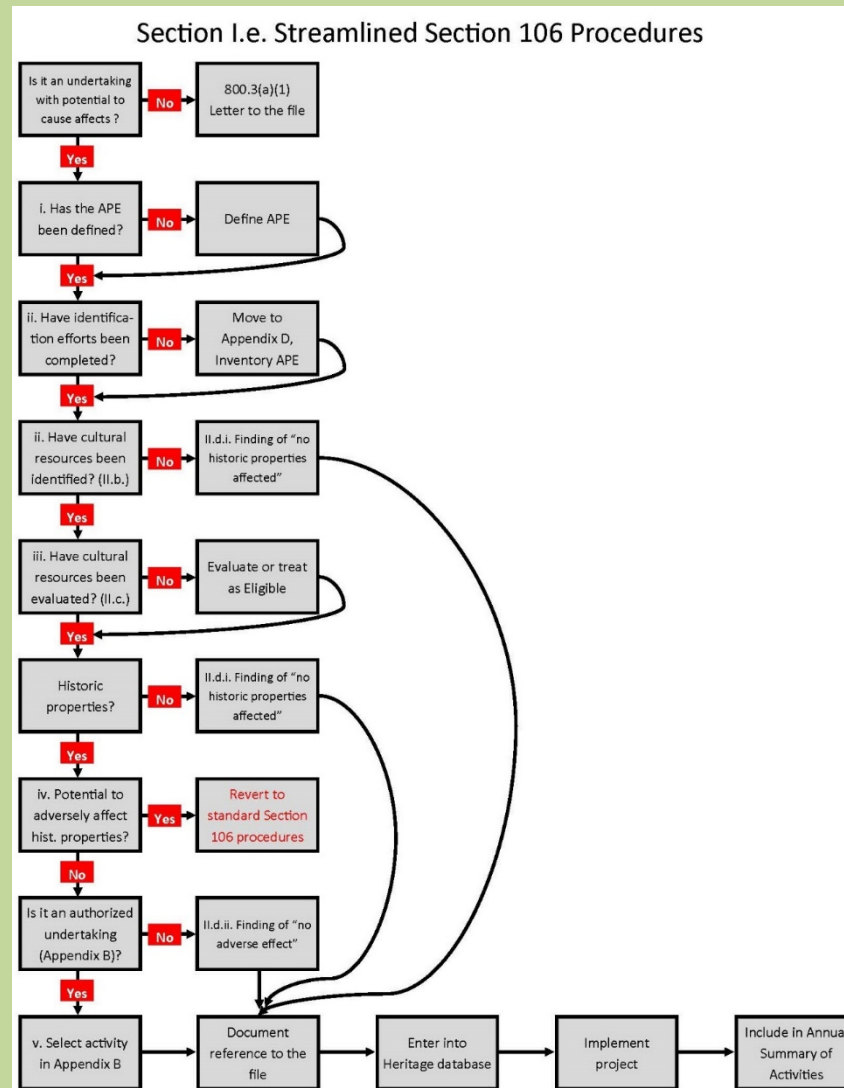
For Each and Every Undertaking

1. **Consultation with SHPO** on APE
2. **Consultation with Tribes**
3. **Invitation to ACHP** to consult as needed
4. **Opportunity for the public** to comment
5. **Identification** (archaeological survey usually)
6. **Evaluation** (of discovered cultural resources)
7. **A “finding” of effect**
8. **SHPO** given the opportunity to comment on the National Register eligibility determination
9. **SHPO** given the opportunity to comment on the **“finding” of effect** (No Historic Properties Affected, No Adverse Effects, or Adverse Effects)
10. **Resolve Adverse Effects through a legally enforceable MOA**

Standard Procedures



Streamlined Procedures



Key Roles

ACHP

SHPO

Alaska Native Tribes and Corporations

Other interested parties/Stakeholders

Other affected agencies

Project Proponent – Internal and External

Tribal Relations Specialist

Heritage Professional

Advises whether an undertaking
is occurring

Advises whether the PA applies

Determines Eligibility

Prepares Finding of Effect

Line Officer

Responsible for

Government-to-Government Consultation

Makes **final decisions**

Ultimately responsible for fulfilling Section
106 responsibilities

Key Provisions

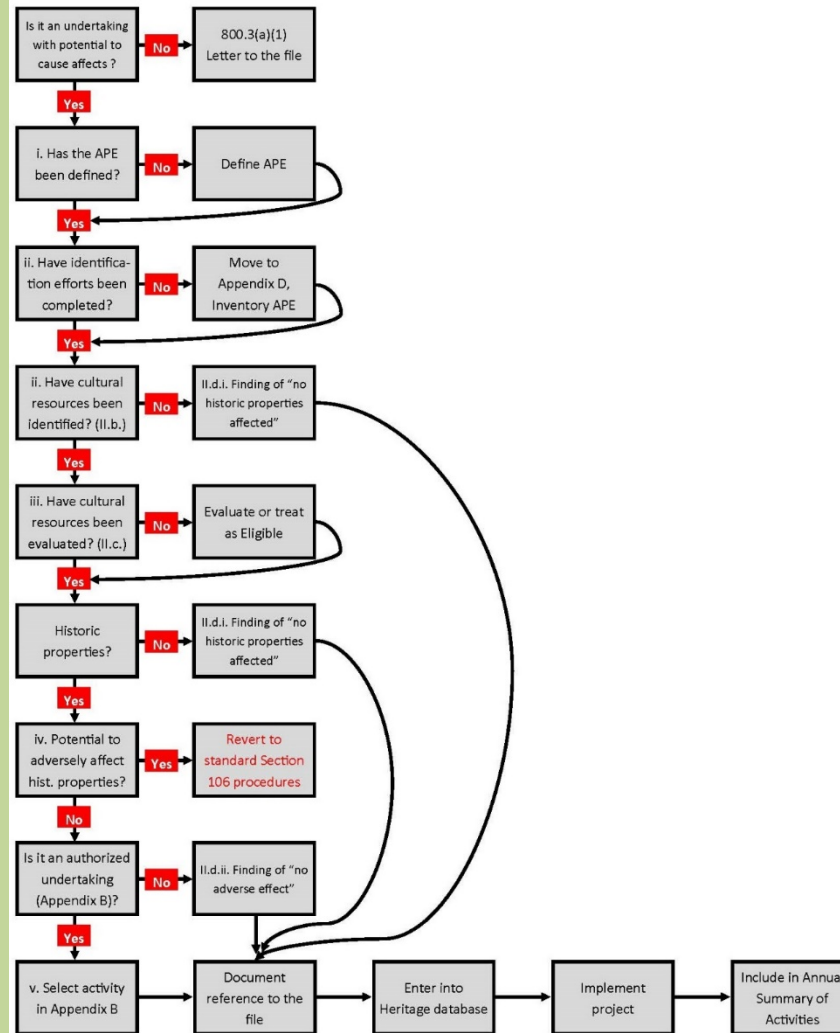
This is a 10 year PA, with an option for renewal at 5 years

Standard PA provisions include:

- Professional Qualifications & Standards
- Consultation
- Public Participation
- **Streamlined Procedures**
- Integrating with NEPA
- Identification
- **Evaluation**
- Assessing Effects
- **Monitoring**
- Treatment of Human Remains
- Emergency Undertakings
- Collections
- Annual Reporting
- **Interagency Collaboration**
- Coordination with Other Federal Reviews
- Training
- Dispute Resolution
- Amendments
- Suspension
- Termination
- Duration
- Appendix A, Glossary
- **Appendix B Authorized Undertakings**
- Appendix C Forms & Templates
- Appendix D Inventory Strategy
- Appendix E Parties Invited to Consult on PA

Streamlined Procedures

Section I.e. Streamlined Section 106 Procedures



Evaluation

Eligibility Determinations take TIME and have a BIG PAYOFF

Measures to streamline this part of the process are available and can yield the benefits of cost and time savings.

NOT ELIGIBLE = **released from management**

ELIGIBLE = avoidance and/or Adverse Effects resolved through MOA

UNEVALUATED = TREATED AS ELIGIBLE

Tongass:

3871 Cultural resources

651 Eligible (historic properties)

44 Listed (historic properties)

231 Not Eligible (released from management)

2945 Unevaluated (treated as Eligible) or 76

% Unevaluated

Chugach:

2376 Cultural resources

131 Eligible (historic properties)

20 Listed (historic properties)

34 Not Eligible (released from management)

2191 Unevaluated (treated as Eligible) or 92

% Unevaluated

Monitoring

If a “no adverse effect” finding is made - with stipulations – Monitoring is typically required on a schedule the Heritage Professional deems appropriate

- **Can occur during or after project implementation**
- **Not all cultural resources can be discovered** during the identification step
- **Subsequent activities may reveal unanticipated effects**



Hidden Falls. Surveyed with no results. Bulldozer found deeply buried site, one of the oldest in Alaska at the time of discovery (~9,800 years BP)

Interagency Collaboration

Annual Summary of Activities & Biennial Meeting

Required Forest Service Participants

- Regional Forester
- Forest Supervisors
- Regional & Forest Heritage Program Managers
- Regional & Forest Tribal Relations Program Managers

Invitees

- SHPO
- ACHP
- Alaska Native Tribes & Corporations
- Interested Parties



Appendix B – Authorized Undertakings

Undertakings that are agreed to have
no potential to adversely affect historic properties

- Describes **when it may be necessary to revert to Standard Section 106** procedures
- **Specific examples of kinds of activities** that can be carried out under Appendix B
- **Heritage Professional may choose to apply** General Guidelines for an activity that is not listed in the examples in order to use Appendix B
- If Specific examples and General Guidelines do not apply to the activity, then **Standard Section 106 procedures must be used.**

Benefits of Streamlining Section 106

Saves **TIME** – you are able to implement your projects sooner
&
Heritage staff are able to dedicate more time to Heritage
program projects

Moves Heritage program from **REACTING** to other program areas and spending a majority of time meeting compliance requirements to **PROACTIVELY** developing Heritage stewardship projects that **that benefit the public.**

Heritage staff are able to spend more time meeting the **Heritage Program Managed to Standard Target**

Less time on Section 106 internal **compliance** and **more time on** Section 110 - external or **public outreach projects** that meet the intent of NHPA



Benefits of Streamlining Section 106

Heritage Program Managed to Standard on the Tongass



Collaborating with Tribes, stakeholders and other interested parties in identifying new cultural resources and historic properties



Monitoring sensitive sites collaboratively with partners



Education and partnerships to engage the public, schools, and universities



Benefits of Streamlining Section 106

Heritage Program Managed to Standard on the Chugach



Preserve our heritage through historic preservation cooperative efforts – Cordova PO and Courthouse



Partnerships across the state to celebrate significant events of the past - Iditarod National Historic Trail



Engage the public and maintain historical connections to the land - Sqilantnu Archaeological District and McKinley Trail Cabin



Contacts/More Information

The PA and links to all law, policy, & other guidance referenced in the PA can be found here:

www.fs.usda.gov/goto/AKRegionPA

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