

**Mendiola, Doris**

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**Subject:** FW: Draft FSME Interim Staff Guidance FSME-ISG-02: Guidance for Conducting the Section 106 Process of the National Historic Preservation Act for Uranium Recovery Licensing Actions

**Attachments:** nw.nrc.interim 106 guidance for ISR Uranium Project.con.07oct14.pdf; ACHP comments on NRC draft guidance ISR Uranium projects rev 07oct14.pdf

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**From:** OFAP [mailto:OFAP2@achp.gov]  
**Sent:** Tuesday, October 07, 2014 2:02 PM  
**To:** Bladey, Cindy  
**Cc:** Mohseni, Aby; Chang, Lydia; Camper, Larry  
**Subject:** Draft FSME Interim Staff Guidance FSME-ISG-02: Guidance for Conducting the Section 106 Process of the National Historic Preservation Act for Uranium Recovery Licensing Actions

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From: Office of Federal Agency Programs

Advisory Council on Historic Preservation

Attached is our letter on the subject undertaking (in Adobe Acrobat PDF format)

If you have any questions concerning our letter, please contact:

John Eddins  
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202 517-0211  
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Note: Please do not reply to this email.

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Preserving America's Heritage

October 7, 2014

Ms. Cindy Bladey  
Chief, Rules, Announcements, and Directives Branch  
Office of Administration, Mail Stop: 3WFN-06-44M  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001.

Ref: *Draft FSME Interim Staff Guidance FSME-ISG-02: Guidance for Conducting the Section 106 Process of the National Historic Preservation Act for Uranium Recovery Licensing Actions Docket ID NRC-2014-0142*

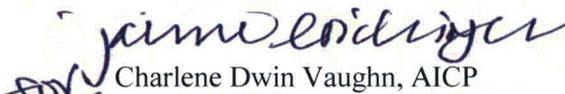
Dear Ms. Bladey:

The Advisory Council on Historic Preservation (ACHP) has reviewed the draft Interim Staff Guidance, FSME-ISG-02: Guidance for Conducting the Section 106 Process of the National Historic Preservation Act for Uranium Recovery Licensing Actions developed by the Nuclear Regulatory Commission (NRC). As we understand, the NRC has decided to use this draft interim guidance to supplement the general guidance provided in NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with Nuclear Material Safety and Safeguards Programs" (NUREG-1748), for compliance with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470 et. Seq., and its implementing regulations, "Protection of Historic Properties" (36 C.F.R. part 800 (2004)).

In the enclosed review we provide comment for each section in the draft guidance. Our comments are focused on clarification of the steps of the Section 106 review process as set forth in the Section 106 implementing regulations. At times, the attempt to simplify and summarize the steps can mischaracterize aspects of the Section 106 review process that federal agencies are required to carry out. We have attempted to amplify some of the important aspects of the review process that are not clear in this draft guidance. In addition to utilizing the interim guidance developed by NRC after modification to reflect the comments of the ACHP, we strongly recommend that NRC staff refer directly to the Section 106 regulations (36 C.F.R. Part 800) as well as extensive guidance available on the ACHP's website. We also encourage you to continue consulting the ACHP staff who can advise you on regulatory issues that need to be addressed.

Should you have any questions or wish to discuss this matter further, please contact John T. Eddins, PhD at 202-517-0211, or by e-mail at [jeddins@achp.gov](mailto:jeddins@achp.gov).

Sincerely,

  
Charlene Dwin Vaughn, AICP  
Assistant Director, FPLAS  
Office of Federal Agency Programs

Enclosure

ADVISORY COUNCIL ON HISTORIC PRESERVATION  
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## ACHP comments on draft FSME INTERIM STAFF GUIDANCE

(Docket ID NRC-2014-0142)

## FSME-ISG-02: GUIDANCE FOR CONDUCTING THE SECTION 106 PROCESS OF THE NATIONAL HISTORIC PRESERVATION ACT FOR URANIUM RECOVERY LICENSING ACTIONS

The Advisory Council on Historic Preservation (ACHP) has reviewed the draft FSME Interim Staff Guidance *FSME-ISG-02: Guidance For Conducting The Section 106 Process Of The National Historic Preservation Act For Uranium Recovery Licensing Actions*. Below we provide comment for each section in the draft guidance. Our comments are focused on clarification of the steps for compliance with Section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470 et. Seq., as set forth in its implementing regulations, "Protection of Historic Properties" (36 C.F.R. part 800 (2004)). At times, the attempt to simplify and condense the steps of the Section 106 review process can mischaracterize aspects of the Section 106 review process that federal agencies are required to carry out. We therefore have attempted to amplify and clarify the 4-Step Section 106 review process as presented in this draft guidance. In addition to utilizing the interim guidance developed by NRC, we strongly recommend that NRC staff refer directly to the Section 106 regulations (36 C.F.R. Part 800) and guidance available on the ACHP's website.

***Section 6.1 Initiation of the Section 106 Process (Step 1)***

NRC: "In accordance with the NHPA regulations, the NRC staff will notify the ACHP, SHPO/THPO, and consulting parties that the NRC intends to coordinate the Section 106 process with the NEPA process."

ACHP: A federal agency should always try to coordinate its compliance with NEPA and Section 106 of the NHPA. However, a federal agency only has to notify ACHP and SHPO/THPO if it plans to substitute the NEPA process for the procedures set forth in 36 C.F.R. §§ 800.3 through 800.6 of the Section 106 regulations when it intends to comply with 36 C.F.R. § 800.8(c) of our regulations. See the guidance recently issued by ACHP and CEQ: *NEPA and NHPA, A Handbook for Integrating NEPA and Section 106, March 2013* ([http://www.achp.gov/docs/NEPA\\_NHPA\\_Section\\_106\\_Handbook\\_Mar2013.pdf](http://www.achp.gov/docs/NEPA_NHPA_Section_106_Handbook_Mar2013.pdf)).

***Section 6.1.1 Establish Whether there is an Undertaking***

NRC: "As a result, the federal undertaking does not occur until the NRC receives an application requesting a licensing action."

ACHP: The undertaking does not become subject to Section 106 review requiring NRC to comply with the requirements of Section 106 until NRC receives a formal application ...

***Section 6.1.2 Identification of Consulting Parties***

NRC: "The NRC is responsible for the identification of the appropriate consulting parties, including the SHPO, THPO, Indian Tribes (Tribes) and Native Hawaiian Organizations (NHOs), ACHP, local governments, preservation organizations, applicants, landowners, and individuals who may be concerned with the possible effects of the undertaking on historic properties."

ACHP: The participants in the Section 106 process are listed in 36 C.F.R. § 800.2 of 36 CFR Part 800. The regulations recognize that in addition to the parties listed, certain individuals and organizations with a demonstrated interest in an undertaking are appropriate to participate in the Section 106 review as consulting parties due to the nature of their legal or economic relation to the undertaking or affected

properties, **OR** their concern with the undertaking's effects on historic properties (36 C.F.R § 800.2(d)). Suitability of individuals or organizations to be consulting parties is not limited exclusively to those who have concerns about the undertaking's effects on historic properties.

NRC: "The SHPO advises and assists federal agencies in carrying out their Section 106 responsibilities to ensure consideration of historic properties at all levels of planning and development. The NRC staff should also determine whether the undertaking occurs on, or could affect, historic properties on tribal lands. When the undertaking occurs on, or could affect, historic properties on tribal lands, the federal agency consults with the THPO in lieu of the SHPO as long as the Tribe ~~or NHO~~ has been approved under Section 101(d)(2) of the NHPA to assume the responsibilities of the SHPO. Tribes ~~or NHOs~~ that have not formally assumed the responsibilities of the SHPO under Section 101(d)(2) of the NHPA have the same rights of consultation and concurrence when the undertaking takes place on, or affects, historic properties on tribal lands, except that the consultation would be in addition to the consultation with the SHPO."

ACHP: NHOs do not have THPOs.

### ***Section 6.1.3 Letters Initiating Consultation***

ACHP: Regarding the initiation of consultation, NRC staff should consult guidance on best practices in tribal consultation, including that provided by the ACHP entitled *Consultation with Indian Tribes in the Section 106 Review Process: A Handbook* and *Consultation with Native Hawaiian Organizations in the Section 106 Review Process: A Handbook*, both of which are available online (<http://www.achp.gov/regs-tribes2008.pdf>; <http://www.achp.gov/Native%20Hawaiian%20Consultation%20Handbook.pdf>)

### ***Section 6.2 Identification of Historic Properties (Step 2)***

NRC: "As part of its identification process, the NRC staff first, determines the scope of its identification efforts, which includes defining and documenting the APE, reviewing existing information (including information provided in the license application such as the historic and cultural resource report), and gathering information from consulting parties (including information about historic properties of religious and cultural significance to Tribes).

ACHP: The federal agency determines the APE and scope of the identification effort in consultation with SHPO and/or THPO, as appropriate.

NRC: "Confidentiality concerns will be respected and associated information will remain confidential to the extent permitted by law, in compliance with 36 C.F.R. 800.11(c), ..."

ACHP: In addition to referencing 36 C.F.R. § 800.11(c) of the Section 106 regulations, NRC should also reference Section 304 of the NHPA in discussions regarding confidentiality.

#### ***Section 6.2.1 Area(s) of Potential Effects***

ACHP: It's important to remember that there may be multiple, overlapping Areas of Potential Effect (APEs), depending on the types of historic properties that may be affected and the nature of the effects. Further, the APE(s) can change over the course of the Section 106 consultation as new information is learned.

NRC: "The NRC staff should consider the following factors (including but not limited to) in defining the APE: . . ."

ACHP: NRC should add a bullet point specifying the need to consider the potential for the presence of and the need to require surveys to identify historic properties that may be subject to indirect effects from the undertaking located beyond the direct effect foot print of the undertaking.

### ***Section 6.2.2 Reviewing and Gathering Information on Historic Properties***

NRC: “As previously discussed, a federal agency shall make a reasonable and good faith effort in identifying historic properties.”

ACHP: The federal agency must make a reasonable and good faith effort to identify historic properties ***that may be affected by the undertaking***. This means the identification effort should be focused on identifying historic properties within and beyond the footprint of the undertaking that may be affected, directly or indirectly, by the undertaking.

NRC: “The NRC staff should consider holding information-gathering meetings with consulting parties, as necessary. Confidentiality concerns regarding the information gathered through these meetings will be respected and associated information will remain confidential and protected from public disclosure to the extent permitted by law, including compliance with 36 C.F.R. 800.11(c).”

ACHP: The federal agency is not limited to gathering information about the presence of historic properties from consulting parties only. 36 C.F.R. § 800.4(a)(3) of 36 CFR Part 800 instructs the federal agency to seek information, as appropriate, from consulting parties, ***and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area***, and identify issues relating to the undertaking's potential effects on historic properties.

### ***Section 6.2.3 Surveys***

NRC: “In determining the scope of work and level of effort for the fieldwork, the NRC staff should work with consulting parties who plan to participate in the survey to identify the equipment, vehicles, maps, and tools needed to conduct the fieldwork.”

ACHP: Consulting parties typically do not participate in surveys to identify historic properties, per se. 36 CFR Part 800 requires federal agencies to make a “reasonable and good faith effort” to identify historic properties that may be affected by their undertakings. The regulations set out several factors that need to be considered in making the effort both reasonable in terms of intensity and scale, and carried out in good faith through its development and execution. The ACHP provides guidance regarding what constitutes a reasonable and good faith effort to identify historic properties in *Meeting The “Reasonable And Good Faith” Identification Standard In Section 106 Review* (available on line at [http://www.achp.gov/docs/reasonable\\_good\\_faith\\_identification.pdf](http://www.achp.gov/docs/reasonable_good_faith_identification.pdf)). The ACHP’s online archaeology guidance provides further detailed discussion on how these factors can be applied to archaeological sites to ensure Section 106 identification plans are adequate and appropriate to a given situation (<http://www.achp.gov/archguide/>). The ACHP’s professional staff is also available to assist agencies, SHPOs/THPOs, tribes, other consulting parties, consultants, and contractors in interpreting the reasonable and good faith standard when questions or disputes arise during the consultation process.

NRC: “The NRC staff will determine the need for a field survey and the appropriate methodology to use, after consultation with the parties. The NRC staff has used an open-site approach for conducting field surveys for tribal site identification. Other federal agencies have also used the open-site approach. This approach involves providing access to the proposed project site during a specific period for the purpose of site identification. Each consulting party may choose its surveyors to conduct the fieldwork and would

prepare and submit a survey report documenting the survey's findings. The NRC staff, however, should use the open-site approach as a starting point and begin communication with the consulting parties on the survey approach to be used."

ACHP: As noted above, federal agencies are required to make a "reasonable and good faith effort" to identify historic properties that may be affected by their undertakings. This very often involves reliance on field surveys carried out by a qualified individual or individuals who meet the Secretary of the Interior's qualification standards and have a demonstrated familiarity with the range of potentially historic properties that may be encountered, and their characteristics. 36 C.F.R. § 800.2(a)(3) of 36 CFR Part 800 specifies that "Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations . . . The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines." Note however, that 36 CFR Part 800 also acknowledges the special expertise possessed by Indian tribes and NHOs in assessing the eligibility of historic properties that may possess religious and cultural significance to them (regardless of whether or not such tribes and organizations meet the Secretary's qualification standards).

Depending on the circumstances of the specific undertaking, the use of an "open-site approach to field survey", as defined by NRC, may not necessarily meet the requirements of a reasonable and good faith identification effort. Section 101(d)(6)(B) of the NHPA and 36 C.F.R § 800.2(c)(2) of the regulations requires the agency official to consult with any Indian tribe or NHO that attaches religious and cultural significance to historic properties that may be affected by an undertaking. Further, it also requires that the agency official shall ensure that consultation in the Section 106 process provides the Indian tribe or NHO a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. The open-site approach for field survey may help to facilitate such consultation, but may not necessarily achieve the reasonable and good faith standard for identification. The suitability of an 'open-site methodology' for field survey to achieve the reasonable and good faith standard for identification must be judged on a case by case basis.

#### ***6.2.4 Determination of Eligibility***

NRC: "NHPA implementing regulations require a federal agency to consult with the SHPO/THPO and Tribes that attach religious and cultural significance to previously unevaluated historic properties within the APE when applying the National Register criteria."

ACHP: Previously evaluated properties may have to be re-evaluated given the passage of time or based upon changing conditions. According to 36 C.F.R § 800.4(c)(1) of the Section 106 regulations, the federal agency, in consultation with the SHPO/THPO and any Indian tribe or NHO that attaches religious and cultural significance to identified properties and guided by the Secretary's Standards and Guidelines for Evaluation, shall apply the National Register criteria (36 C.F.R. part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. **The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible.** The agency official shall acknowledge that Indian tribes and NHOs possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

NRC: "The NRC staff should also contact the SHPO to understand if the state has specific requirements to consider when making its determinations."

ACHP: State requirements are not specifically relevant to determinations of eligibility under Section 106. However, in determining the scope of the identification effort, pursuant to 36 C.F.R. § 800.4(b)(1), the agency official should also consider other applicable professional, State, tribal, and local laws, standards and guidelines.

NRC: “However, where there is a disagreement between the NRC and the SHPO and/or THPO (when an undertaking occurs on tribal land or affects historic properties on tribal land) regarding the eligibility determinations and the disagreement cannot be resolved after further consultation, the NRC will request a formal determination of eligibility from the Keeper of the National Register. The ACHP may also request that the NRC seek the Keeper’s determination of eligibility. The Keeper’s decision is final. If a Tribe that attaches religious and cultural significance to a property off tribal lands is in disagreement with the eligibility determination, it may ask the ACHP to request the NRC to obtain an eligibility determination from the Keeper.”

ACHP: The Secretary of the Interior can also request that the federal agency obtain a determination of eligibility from the Secretary pursuant to 36 C.F.R. part 63. 36 C.F.R. § 800.4(c)(2) of the Section 106 regulations specifies that if the agency official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 C.F.R. part 63. If an Indian tribe or NHO that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the agency official to obtain a determination of eligibility.

### *6.3 Assessment of Adverse Effects (Step 3)*

NRC: “NHPA implementing regulations require consultation with the SHPO and/or THPO (when an undertaking occurs on tribal land or affects historic properties on tribal land) and any Tribe that attaches religious and cultural significance to historic properties within the APE on the assessment of adverse effects.”

ACHP: In carrying out an assessment of effects, the federal agency must also consider any views concerning such effects which have been provided by consulting parties and the public.

NRC: “The SHPO and/or THPO (when an undertaking occurs on tribal land or affects historic properties on tribal land) or any consulting party may notify the NRC in writing of a disagreement with the NRC staff’s finding on adverse effects within the 30-day review period. In the case of a disagreement, the NRC staff will consult with the party. If the disagreement cannot be resolved, the NRC will request the ACHP’s review of the finding and follow the process discussed in 36 C.F.R. 800.5(c)(3)(i) and (c)(3)(ii). The NRC staff will provide the documentation specified in 36 C.F.R. 800.11(e) to ACHP and copy the consulting parties on the NRC staff’s request to ACHP. The NRC staff will also make the documentation publicly available subject to the confidentiality provisions in 36 C.F.R. 800.11(c).”

ACHP: According to 36 C.F.R. § 800.5(c)(2)(iii) of 36 CFR Part 800, the agency official should seek the concurrence of any Indian tribe or NHO that has made known to the agency official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or NHO disagrees with the finding, it may within the 30 day review period specify the reasons for disagreeing with the finding and request the Council to review and object to the finding pursuant to 36 C.F.R. 800.5(c)(2)(ii).

ACHP: NRC should reference further details of the process for ACHP review of disputes about findings of no adverse effect as set forth in 36 C.F.R. § 800.5(c)(3) of the regulations. If the agency official

proposes a finding of no adverse effect, and the federal agency has received within the 30 day review period a notification of an objection specifying the reasons for the disagreement from SHPO/THPO or a consulting party that cannot be resolved, the agency official shall request the ACHP to review the finding. The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the finding. Further, the person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial finding of no adverse effect, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

#### **6.4 Resolution of Adverse Effects (Step 4)**

NRC: "The parties may also develop a Memorandum Of Agreement (MOA) to memorialize how they will resolve adverse effects on historic properties."

ACHP: The federal agency must, in consultation with SHPO/THPO, as appropriate, and other consulting parties, develop and execute an MOA or PA to set forth the resolution of adverse effects for an undertaking and complete the Section 106 review process. As long as the terms of the MOA or PA are carried out, the federal agency remains in compliance with Section 106 of the NHPA for the undertaking. As specified at 36 C.F.R. § 800.6(b)(1)(iv), if the agency official and the SHPO/THPO agree on how the adverse effects will be resolved, they shall execute an MOA. An MOA, executed and implemented pursuant to section 36 C.F.R. § 800.6, evidences the agency official's compliance with Section 106 and shall govern the undertaking and all of its parts. The agency official shall ensure that the undertaking is carried out in accordance with the MOA (36 C.F.R. § 800.6(c)).

The only alternative to development of an MOA or PA to complete the Section 106 review, or receiving ACHP formal comments under 36 C.F.R. § 800.7 and responding to them, is provided through the NEPA substitution process addressed in 36 C.F.R. § 800.8(c). This section of the 106 regulations authorizes agencies to use the procedures and documentation required for the preparation of an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) or an Environmental Impact Statement (EIS) and Record of Decision (ROD) to comply with Section 106 in lieu of the procedures in 36 C.F.R. § 800.3 through 36 C.F.R. § 800.6 of the Section 106 regulations. When the agency is preparing an EA and there are adverse effects to historic properties, then the agency will have to develop an MOA (or a PA under 36 C.F.R. § 800.14(b)) or consider formal ACHP comments to conclude the Section 106 process before making the decision whether to proceed with the proposed action. If during preparation of an EIS, an agency finds there would be adverse effects from the proposed undertaking, it must document the resolution of those effects in one of the following ways: (1) incorporating a description of the agency's binding commitment to measures to avoid, minimize, or mitigate such effects in the ROD, if such measures were proposed in the DEIS or EIS and available for the consulting parties' review and opportunity to object; (2) executing an MOA in compliance with 36 C.F.R. § 800.6(c); or (3) receiving ACHP formal comments under 36 C.F.R. § 800.7 and responding to them. NRC staff should refer to *NEPA and NHPA, A Handbook for Integrating NEPA and Section 106, March 2013* ([http://www.achp.gov/docs/NEPA\\_NHPA\\_Section\\_106\\_Handbook\\_Mar2013.pdf](http://www.achp.gov/docs/NEPA_NHPA_Section_106_Handbook_Mar2013.pdf)) for more specific guidance.

NRC: "Signatories typically include the SHPO/THPO, federal agency, and the ACHP, if the ACHP joined the consultation."

ACHP: Mandatory signatories for a two-party MOA or PA include the SHPO/THPO as appropriate and the federal agency. Mandatory signatories for a three-party MOA or PA, developed with the formal consultation of the ACHP, include SHPO/THPO, as appropriate, federal agency, and ACHP. Other consulting parties may be invited to sign the agreement as “invited signatories” or as “concurring parties”. The rights of signatories, invited signatories, and concurring parties with regard to execution, amendment, and termination of MOAs and PAs are specified in 36 C.F.R. § 800.6(c).

NRC: “The PA should be developed in accordance with 36 C.F.R. 800.14(b) and must be completed before making the licensing decision.”

ACHP: A Programmatic Agreement (PA) is used when the federal agency is not able to identify all historic properties, or to assess all effects, or to develop steps to resolve adverse effects prior to approval of a complex undertaking. The PA is used to set forth agreed upon protocols for consultation to complete the review process in a phased approach. As noted at 36 C.F.R. § 800.14(b)(1), a PA may be used: (i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope; (ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking; (iii) When nonfederal parties are delegated major decision making responsibilities; (iv) Where routine management activities are undertaken at Federal installations, facilities, or other land management units; or (v) Where other circumstances warrant a departure from the normal Section 106 process. The Section 106 regulations specify, at 36 C.F.R. § 800.14(b)(3), that consultation to develop a PA for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow 36 C.F.R. § 800.6.

***Appendix A: How Applicants Can Facilitate the Section 106 Process Prior to U.S. Nuclear Regulatory Commission (NRC) License Application Submittal***

ACHP: NRC should refer its applicants to guidance regarding compliance with 36 CFR Part 800 available on the ACHP webpage (<http://www.achp.gov/work106.html>), including the ACHP’s Section 106 Applicant Toolkit (<http://www.achp.gov/apptoolkit.html>).

Indian tribes and NHOs often express a concern to be involved early on in the planning stages for projects so that their concerns may be addressed before plans are developed too far. It therefore is reasonable for project proponents to communicate with Indian tribes and NHOs while they are developing project plans, even before formally applying for authorization or assistance from a federal agency.

In addition, 336 CFR Part 800 allows a federal agency to authorize an applicant to initiate Section 106 consultation in a specific project or program, provided that the agency first notifies the relevant SHPO/THPO and the ACHP in writing of the authorization. However, the federal agency remains responsible for ensuring that all Section 106 consultations with Indian tribes are conducted in a sensitive manner respectful of tribal sovereignty and the government-to-government relationship between the federal government and Indian tribes. An agency may not delegate consultation with Indian tribes to an applicant unless the affected tribes have agreed to such an arrangement in writing in advance.