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Preparation of Environmental Reports for Nuclear Power Stations

**Comment On:** NRC-2017-0041-0004

Preparation of Environmental Reports for Nuclear Power Stations; Extension of Comment Period for Draft Regulatory Guide

**Document:** NRC-2017-0041-DRAFT-0006

Comment on FR Doc # 2017-06128

## Submitter Information

**Name:** ACHP Anonymous

*2/13/2017*  
*82 FR 10502*

## General Comment

See attached file(s)

*6*

## Attachments

ACHP Comments on NRC draft Regulatory Guidance

**SUNSI Review Complete**

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**E-RIDS= ADM-03**

**Add= E. O'Donnell (exo)**

*J. Davis (JXD10)*



*Preserving America's Heritage*

May 31, 2017

Ms. Cindy Bladey  
Chief, Rules, Announcement, and Directives Branch  
Office of Administration, Mail Stop: OWFN-12H-08, OWFN-12H-08  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

Ref: U.S. Nuclear Regulatory Commission draft Regulatory Guidance on Preparation of  
Environmental Reports for Nuclear Power Stations

Dear Ms. Cindy Bladey:

The Advisory Council on Historic Preservation (ACHP) has completed its review of the draft U.S. Nuclear Regulatory Commission (NRC) Regulatory Guidance on Preparation of Environmental Reports for Nuclear Power Stations (Regulatory Guidance). We have developed a summary of comments highlighting several issues that the NRC will need to consider as it drafts the next version of this Regulatory Guidance. Our comments are focused on clarification of the requirements related to Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. §300101 et. seq., as set forth in its implementing regulations, "Protection of Historic Properties" (36 C.F.R. Part 800 (2004)). The issues we discuss include: (1) NRC's responsibility for making formal findings and determinations in the Section 106 review; (2) NRC's responsibility for identifying historic properties that may be affected by the undertakings referenced in the guidance, including properties of religious and cultural significance to Indian tribes and Native Hawaiian organizations; and (3) NRC's responsibility for government-to-government consultation with federally recognized Indian tribes.

NRC should clarify that it is not formally delegating the initiation of Section 106 to the applicant pursuant to 36 C.F.R. §800.2(c)(4) of the Section 106 regulations. Rather, in this guidance NRC is encouraging the applicant to consult with appropriate State Historic Preservation Officers, Tribal Historic Preservation Officers, Indian tribes, Native Hawaiian organizations, local governments, and other stakeholders in order to carry out appropriate research to identify historic properties that may be affected by a proposed undertaking. NRC retains the responsibility to formally initiate the Section 106 review with all such parties and make the formal findings and determinations required by the Section 106 regulations. The applicant is carrying out the research regarding historic and cultural resources in order to assist NRC's Section 106 review. This additional information can be included in the Historic and Cultural Resources sections of the Regulatory Guidance (Section 2.6 Historic and Cultural Resources, Page 45; Section 4.6 Historic and Cultural Resources, Page 72; Section 5.6 Historic and Cultural Resources, Page 91; and Appendix B.3 National Historic Preservation Act, Page B-2).

NRC should add that properties of religious and cultural significance to Indian tribes and Native Hawaiian organizations may be eligible for inclusion in the National Register of Historic Places (54 § U.S.C. 302706). NRC should note that the Section 106 regulations specify that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of such properties (36 C.F.R.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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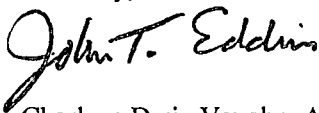
§ 800.4(c)(1)). NRC should explain that often these properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes and Native Hawaiian organizations (36 C.F.R. § 800.2(c)(2)(ii)(D)). However, regardless of the location of such properties, NRC is required to consult with any Indian tribe or Native Hawaiian organization that may ascribe religious or cultural significance to a property that may be affected by an undertaking. This additional information will provide the applicant a better understanding concerning the federal agency's Section 106 responsibilities in identifying and evaluating these types of properties. This additional information can be included in the Historic and Cultural Resources sections of the Regulatory Guidance (Section 2.6 Historic and Cultural Resources, Page 45; Section 4.6 Historic and Cultural Resources, Page 72; and Section 5.6 Historic and Cultural Resources, Page 91).

The ACHP recommends clarifying NRC's government-to-government relationship with federally recognized Indian tribes. It is important to remind the applicant that such Indian tribes are sovereign nations, their relationship with the federal agency exists on a government-to-government basis, and the NRC is responsible for its government to government relationships with Indian tribes. Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes. In January 2017, the NRC published its first Tribal Policy Statement and affirmed its commitment to this government-to-government relationship. If the applicant is corresponding with Indian tribes before the NRC initiates government-to-government consultation, then the applicant should clarify to the Indian tribes that the NRC will be initiating and conducting government-to-government consultation at a later date for the project. A federally recognized Indian tribe is not obligated to consult with an applicant or share information about properties of religious and cultural significance with an applicant. A federally recognized tribe may prefer to communicate directly with NRC at the government-to-government level. This additional information can be included in Chapter C Staff Regulatory Guidance and in Appendix B of the Regulatory Guidance (Section C.II Consultations and Coordinations, Page 18; and Appendix B.3 National Historic Preservation Act, Page B-2).

Regarding Section 106 consultation with Indian tribes and Native Hawaiian organizations, the ACHP recommends adding that consultation will be initiated by an NRC agency official. As defined in 36 C.F.R. § 800.2(a) of our regulations, an agency official is someone who has jurisdiction over the undertaking and takes legal and financial responsibility for the Section 106 compliance. This additional information can be included in the Historic and Cultural Resources and Appendix B sections of the Regulatory Guidance (Section 2.6 Historic and Cultural Resources, Page 45; Section 4.6 Historic and Cultural Resources, Page 72; Section 5.6 Historic and Cultural Resources, Page 91; Appendix B.3 National Historic Preservation Act, Page B-2).

Thank you for considering these comments. Should you have any questions or wish to discuss this matter further, please contact Sarah Stokely at 202-517-0224, or by e-mail at [sstokely@achp.gov](mailto:sstokely@achp.gov).

Sincerely,



*for* Charlene Dwin Vaughn, AICP  
Assistant Director  
Federal Permitting, Licensing and Assistance Section  
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