

**From:** Cushing, Jack  
**Sent:** Wednesday, November 18, 2020 8:01 AM  
**To:** Barnhurst, Daniel  
**Subject:** RE: RE: Scoping Summary Report for the Advanced Nuclear Reactor Generic Environmental Impact Statement

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**From:** Cushing, Jack  
**Sent:** Tuesday, November 17, 2020 4:09 PM  
**To:** Shaun Dinubilo ; Willingham, Laura  
**Subject:** RE: RE: Scoping Summary Report for the Advanced Nuclear Reactor Generic Environmental Impact Statement

Shaun

It was good to talk to you. The generic EIS does not conduct the NHPA Section 106 consultation because we do not know the site location. The Section 106 consultation will be done when an application is submitted and the site is known. The NRC will issue a supplemental EIS when we review the application and we will conduct the Section 106 consultation at that time. Typically we do coordinate NHPA and Section 106 consultation with NEPA in our EIS. The generic EIS does generally describe historic and cultural resources and NHPA Section 106 and references [Regulatory Guide 4.2](#) for applicants to follow when they submit their application. RG 4.2 describes the NHPA Section 106 process and the information that the NRC would need in an application. Below is the guidance section in RG 4.2 that the GEIS will reference.

Jack

## 2.6 Historic and Cultural Resources

Historic and cultural resources are the remains of past human activities and include prehistoric and historic era archaeological sites, historic districts, and buildings, as well as any site structure or object that may be considered eligible for listing on the National Register of Historic Places (NRHP). Historic and cultural resources also include traditional cultural properties important to a living community of people for maintaining its culture. Historic and cultural resources are deemed to be historically significant if they have been determined eligible for or have been listed on the NRHP. A historic property is a historic or cultural resource that is eligible for or listed on the NRHP.<sup>7</sup>

National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), requires Federal agencies to take into account the potential effects of their actions on the cultural environment. The National Historic Preservation Act of 1966 (NHPA) (54 U.S.C. 300101 et seq.) requires Federal agencies to consider the impacts of their undertakings on historic properties and consult with the appropriate State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officer (THPO) or a American Indian Tribes on a government-to-government basis, and other parties with an interest in the effects of the undertaking, including local governments and the public, as applicable.

The applicant should use Section 106 of the NHPA, and implementing regulations at 36 CFR Part 800, "Protection of Historic Properties" (Ref. 46), as a guide for providing historic and cultural

resource information in the ER. In accordance with 36 CFR Part 800, an applicant should engage with the SHPO, THPO, American Indian Tribes, and interested parties for the purposes of gathering information in developing its ER.<sup>8</sup> Information gathering by an applicant is not considered consultation pursuant to 36 CFR 800. Consultation with the SHPO, THPO, American Indian Tribes, and interested parties is the responsibility of the NRC.

The applicant should determine the boundaries of the proposed direct (e.g., physical) and indirect (e.g., visual and auditory) area of potential effects (APE)<sup>9</sup> to be recommended to the NRC. Once the proposed APE has been determined, the applicant should conduct cultural resource investigations to identify historic and cultural resources located within the APE, determine if they are eligible for listing on the NRHP, assess affects, and develop avoidance or mitigation plans to resolve adverse effects. The NRC will use this information to support its Section 106 consultation and assessment of effects for the proposed project.

<sup>7</sup> As defined in 36 CFR 800.16(l)(1), "Historic property means any prehistoric 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 Interior. This term includes artifacts, records, and remains that are related to and located within such properties." As defined in 36 CFR 800.16(l)(2), "The term eligible for inclusion in the National Register includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet National Register listing criteria." National Register criteria for listing are found in 36 CFR Part 60 (Ref. 45), "National Register of Historic Places."

<sup>8</sup> Pursuant to 36 CFR 800.2(c)(2)(ii), the NRC is responsible for consulting with American Indian Tribes that attaches religious and cultural significance to historic properties that may be affected by an undertaking.

<sup>9</sup> As defined in 36 CFR 800.16(d), "Area of potential effects means 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 scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking."

Consistent with 36 CFR 800.16(d), the NRC typically defines the APE as the area or areas at the power plant site and the immediate environs that may be directly or indirectly impacted by building and operating the proposed new unit(s). The applicant should describe the proposed project area and provide the following information in the ER:

- A U.S. Geological Survey Quadrangle map that identifies the direct and indirect APEs.
- Legal description of the APE appropriate for the proposed project area. Note that not all areas of the U.S. (i.e., the original 13 colonies) use the Public Land Survey System (e.g., township, range, and section information).
- Aerial photos of the proposed project site before any land disturbing activities commence.
- Identification of any parts of the APE that are Federal, State, or Tribal-owned (i.e., not privately owned) lands.

### **2.6.1 Cultural Background**

This section of the ER should provide a discussion of the historic use of the land and the activities that have occurred within the APE and the surrounding area. This includes a description of the cultural history of the region (including the proposed project site) from the beginning of human settlement to the present, and summarizes how this information was collected for the proposed APE. Information can be derived from background research (literature review and site file search) and from the use of plat and other historic maps showing ownership, acreage, property boundaries, and the location of existing or former historic structures. Other sources that can assist with description of the cultural background include land records, archival sources, local museums or historical societies, libraries, planning documents, mapping/imaging, and online sources. If available, consult ethnohistoric sources to identify American Indian Tribes and other groups that may have historic and cultural ties to the proposed project area.

### **2.6.2 Historic and Cultural Resources at the Site and in the Vicinity**

This section of the ER should provide a description of historic and cultural resources identified within the direct and indirect APEs (e.g., transmission line corridors, and in the vicinity). All cultural resource survey reports that are developed to identify and assess effects to historic and cultural resources should be referenced and submitted with the license application. However, information (i.e., reports, maps, and site forms) that discloses the locations of unevaluated, potentially eligible, or eligible historic properties (e.g., archaeological sites) should be withheld from public disclosure. This information may be protected under NHPA Section 304 (54 U.S.C. 100707), especially if there is a risk of harm to the resource. The NRC protects cultural resource information disclosing the location of cultural resources (e.g., maps) under Section 304 of the NHPA, consistent with 10 CFR 2.390(a)(3). Section 304 of NHPA requires the NRC to “withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the agency and the Secretary of the Interior agree that disclosure may (1) cause a significant invasion of privacy, (2) risk harm to the historic resource, or (3) impede the use of a traditional religious site by practitioners.” Applicants should discuss with the staff during pre-application interactions how to handle sensitive historic information.

The applicant should rely on qualified professionals who meet the Secretary of Interior’s standards, 36 CFR Part 61, “Professional Qualification Standards” (Ref. 47), to develop the historic and cultural resource sections in the ER. The applicant is encouraged to engage the NRC staff as early as possible in the planning process, in accordance with 10 CFR 51.40, “Consultation with NRC

staff,” to avoid issues related to disclosing sensitive location information related to historic and cultural resources when drafting the ER.

The ER should provide the following information:

- description of all past and current historic and cultural resource investigations conducted to identify historic and cultural resources within and surrounding the APE
- documentation of field methods used to identify resources within the APE,
  
- description of all historic and cultural resources, (e.g., prehistoric and historic archaeological sites, standing structures, cemeteries, and traditional cultural properties), and isolated finds and features
- evaluation of historic and cultural resources for NRHP eligibility (i.e., historic properties) including:
  - description of the process and methods used to evaluate these resources
  - documentation of SHPO, THPO, and American Indian Tribes concurrence with process, methods, and conclusions

### 2.6.3 Consultation

Consultation is the responsibility of the Federal agency, and the NRC is required to take the lead on consulting with the SHPO, THPO, American Indian Tribes (on a government-to-government basis), and interested parties as outlined in 36 CFR 800; consultation is not the responsibility of the applicant.<sup>10</sup> The applicant should engage with these parties to gather sufficient information pertinent to the NHPA Section 106 review process in order to assist the NRC in the timely completion of its NHPA Section 106 compliance requirements. The ER should contain a summary of the applicant’s initial outreach efforts to date, including the process used to identify American Indian Tribes and potential interested parties about the proposed project. The applicant should evaluate the significance of the historic and cultural resources and assess any effects the proposed project may have on them. For areas not surveyed (e.g., areas too disturbed or devoid of potential historic and cultural resources), proper documentation, a basis for exclusion, and concurrence on survey methodology from the SHPO should be provided.

The ER should contain copies of all correspondence with the SHPO, THPO, American Indian Tribes, or members of the public with whom the applicant engaged to gather information about historic and cultural resources within the APE. These documents should be included in an Appendix of the ER. Applicants may refer to NEI 10-07 regarding the information gathering process, engaging with potential consulting parties, and the importance of early coordination.

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If an 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.

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**From:** Shaun Dinubilo <[sdinubilo@squaxin.us](mailto:sdinubilo@squaxin.us)>

**Sent:** Tuesday, November 17, 2020 2:13 PM

**To:** Cushing, Jack <[Jack.Cushing@nrc.gov](mailto:Jack.Cushing@nrc.gov)>; Willingham, Laura <[laura.willingham@nrc.gov](mailto:laura.willingham@nrc.gov)>

**Subject:** [External\_Sender] RE: Scoping Summary Report for the Advanced Nuclear Reactor Generic Environmental Impact Statement

Hi Jack and Laura,

As stated in my previous comment, refusing to address your section 106 obligations within your generic EIS is a failure to follow NEPA. While we understand that your EIS is a generic one for a large scale permitting of Advance nuclear Reactors, however, the EIS should broadly address section 106 and provide the foundation for how the individual permits will address section 106 compliance. Due to the larger scale of review under NEPA, broadly discussing section 106 and historic properties are not outside the scope of the generic EIS and would be compliance with the NEPA. While your agency may not be equipped to address/handle section 106 issues at the large scale planning level it is a requirement of NEPA. To help guide your agency incorporating section 106 into the generic EIS, I have attached the Advisory Council's guidance document on how to incorporate NHPA into NEPA.

Respectfully,



Shaun Dinubilo  
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As per 43 CFR 7.18[a][1]) of the Archaeological Resource Protection Act, Section 304 of the National Historic Preservation Act, and RCW 42.56.300 of the Washington State Public Records Act- Archaeological Sites, all information concerning the location, character, and ownership of any cultural resource must be withheld from public disclosure.

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**From:** Rhonda Foster <[rfoster@squaxin.us](mailto:rfoster@squaxin.us)>  
**Sent:** Tuesday, November 17, 2020 9:10 AM  
**To:** Shaun Dinubilo <[sdinubilo@squaxin.us](mailto:sdinubilo@squaxin.us)>  
**Subject:** Fwd: Scoping Summary Report for the Advanced Nuclear Reactor Generic Environmental Impact Statement  
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**From:** Olmstead, Joan <[Joan.Olmstead@nrc.gov](mailto:Joan.Olmstead@nrc.gov)>  
**Sent:** Tuesday, November 17, 2020, 8:33 AM  
**To:** Rhonda Foster  
**Subject:** RE: Scoping Summary Report for the Advanced Nuclear Reactor Generic Environmental Impact Statement

Good Morning,

On April 30, 2020, the U.S. Nuclear Regulatory Commission issued a Notice of Intent to Prepare an Advanced Nuclear Reactor Generic Environmental Impact Statement in the *Federal Register (FR)* (84 FR 62559). In accordance with Title 10 of the *Code of Federal Regulations* Part 51.26, the U.S. Nuclear Regulatory Commission (NRC) conducted a scoping meeting to collect comments. The NRC staff also collected comments from the public via e-mail, standard mail, and [regulations.gov](http://regulations.gov).

The NRC staff reviewed the transcripts from the public meeting and all comments received during the public scoping period and identified individual comments. The NRC received approximately 3,200 comment correspondence and approximately 110 unique comments. You will find a summary of the comments received and the staff's responses in the attached Scoping Summary Report.

On September 21, 2020 the Commission directed the staff to codify the findings of the ANR GEIS. The staff is currently assessing the impacts of adding rulemaking to the ANR GEIS effort and developing a revised schedule. Information on the NRC's rulemaking activities can be found at <https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/active/RuleIndex.html>. Information on the ANR GEIS rulemaking will be added to this website in the near future.

Please direct any inquiries you have on this project to Mr. Jack Cushing, Sr. Project Manager at 301-415-3835, or via email at [Jack.Cushing@nrc.gov](mailto:Jack.Cushing@nrc.gov) or to Ms. Laura Willingham, Project Manager at 301-415-0857, or via email at [Laura.Willingham@nrc.gov](mailto:Laura.Willingham@nrc.gov).

Thank you

Joan Olmstead

***Joan Olmstead***

Liaison Project Manager

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U.S. Nuclear Regulatory Commission

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**Recipients:**

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