



ADVISORY COUNCIL ON HISTORIC PRESERVATION

**Briefing on the U.S. Nuclear Regulatory
Commission Tribal Policy Statement
Advisory Council on Historic Preservation Comments**

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ADVISORY COUNCIL ON HISTORIC PRESERVATION
PRESERVING AMERICA'S HERITAGE

NATIONAL HISTORIC PRESERVATION ACT

- ▶ Establishes federal agency preservation responsibilities (Section 110)
- ▶ Administers historic preservation review process (Section 106)
- ▶ Coordinates federal, state, local, and tribal involvement in undertakings (Section 106)

THE SECTION 106 PROCESS

36 CFR § 800.3-7

CONSULTATION

1. INITIATE the process

- Determine undertaking
- Notify SHPO/THPO
- Identify Tribes and Other Consulting Parties
- Plan to involve the public

*No undertaking/
potential to cause
effects?*

2. IDENTIFY historic properties

- Determine APE
- Identify historic properties
- Consult with SHPO/THPO, Tribes, and Other Consulting Parties
- Involve the public

*No historic properties
present/affected?*

3. ASSESS adverse effects

- Apply criteria of adverse effect
- Consult with SHPO/THPO, Tribes, and Other Consulting Parties
- Involve the public

*No historic properties
adversely affected?*

4. RESOLVE adverse effects

- Avoid, minimize, or mitigate adverse effects
- Notify ACHP
- Consult with SHPO/THPO, Tribes, and Other Consulting Parties
- Involve the public

*Agreement (MOA/PA)
or
Council Comment*

PARTICIPANTS IN SECTION 106

- ▶ Federal agencies
- ▶ State Historic Preservation Officer(s)
- ▶ Tribal Historic Preservation Officer(s)
- ▶ Indian Tribe(s)
- ▶ Native Hawaiian Organization(s)
- ▶ Applicant
- ▶ Other Interested Parties

TRIBAL PARTICIPATION IN SECTION 106

- ▶ 1992 Amendments to the National Historic Preservation Act
- ▶ 2000 Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments
- ▶ 2004 Revised Section 106 regulations

SECTION 106 AND TRIBAL CONSULTATION

- ▶ Tribal sovereignty and government-to-government relationship between the federal government and federally recognized Indian tribes
- ▶ Properties of religious and cultural significance to Indian tribes
- ▶ Tribal special expertise in assessing the eligibility of historic properties

ACHP'S COMMENTS ON NRC TRIBAL POLICY STATEMENT

- ▶ Commends the NRC in issuing its first Tribal Policy Statement and clarifying its policies and procedures
- ▶ Articulates the NRC's commitment to promote a government-to-government relationship between itself and federally recognized Indian tribes
- ▶ Ensures compliance with tribal consultation requirements of Section 106

ACHP RECOMMENDATION TO INCLUDE NATIVE HAWAIIAN ORGANIZATIONS IN NRC TRIBAL POLICY STATEMENT

- ▶ Include Native Hawaiian Organizations in the Tribal Policy Statement
 - The National Historic Preservation Act and the Section 106 regulations require federal agencies to consult with Native Hawaiian Organizations
 - The NRC is responsible for licensing materials in Hawaii

GENERAL RECOMMENDATIONS

- ▶ Engage in tribal consultation early in the planning process with projects
 - Ensure full participation of Indian tribes in the Section 106 review process
 - Allow Indian tribes address concerns with historic properties and the Section 106 review process
- ▶ Acknowledge tribal expertise in assessing the eligibility of historic properties
 - The NRC will need to consult with that specific tribe to carry out such a determination

GENERAL RECOMMENDATIONS

- ▶ Make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations
 - May have an interest in an undertaking
 - Able to identify historic properties that may possess religious and cultural significance to the tribe
- ▶ Build relationships with Indian tribes, Native Alaskans, and Native Hawaiian Organizations
 - Allows for effective consultation

GENERAL RECOMMENDATIONS

- ▶ Train staff in Section 106
- ▶ Inform project applicants about Section 106 and required tribal consultation
 - Acknowledge the role of applicants in planning projects and funding cultural surveys
 - Involve applicants in negotiations to conduct surveys and to augment previous archeological reports

CONCLUSION

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