

#### ADVISORY COUNCIL ON HISTORIC PRESERVATION

# Briefing on the U.S. Nuclear Regulatory Commission Tribal Policy Statement

**Advisory Council on Historic Preservation Comments** 

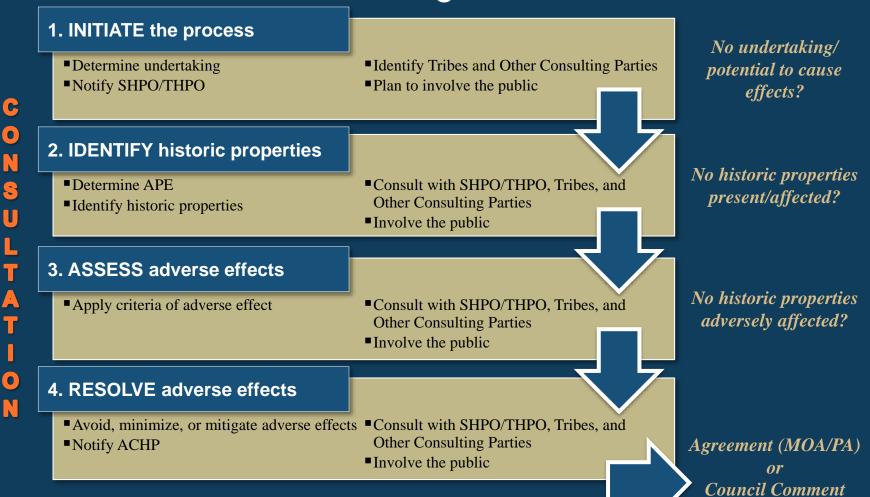
Reid Nelson

### 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



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## 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
- Executive Order 13175 Consultation and Coordination with Indian Tribal Governments
- ▶ 2004 Revised Section 106 regulations

#### SECTION 106 AND TRIBAL CONSULTATION

- Tribal sovereignty and government-togovernment 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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