



Headquarters

USDA Forest Service National Programmatic Agreement Regarding Phasing of Large-scale Multi-year Projects (NPA) Consultation History

Introduction

The Forest Service (FS) mission is to sustain the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. To this end, the FS is increasingly working to restore ecosystems at a large-scale over many years. This trend towards a large-scale multi-year projects aligns with one of the purposes stated in the FS's 2012 final planning rule (77 FR 21162, April 9, 2012), which is to "Ensure planning takes place in the context of the larger landscape" by taking an "all-lands approach." Such landscape restoration projects are often designed to address a variety of important issues to a multitude of parties, such as wildfire threats in the wildland-urban interface, climate change, insects and disease, and other forest health and watershed risks. The scale and multi-year nature of these undertakings increases the need for a programmatic mechanism to allow Section 106 of the National Historic Preservation Act to be completed after a Project decision. As a result, the FS is proposing the National Programmatic Agreement Regarding Phasing of Large-scale Multi-year Projects (NPA) to better sequence compliance with Section 106 and large-scale multi-year Projects.

Synopsis of Consultation and Public Involvement Methodology

Coordination with signatories and consulting parties (such as the National Trust for Historic Preservation and National Association of Tribal Historic Preservation Officers) in 2015 and reinitiated in earnest in 2018, though the need for a programmatic solution was apparent in 2017, when Congress introduced language in a House bill (H.R. 2936, "Resilient Federal Forests Act of 2017") to allow the FS to phase and complete Section 106 after a project decision.

Beginning in 2019, the FS provided two periods of consultation and public involvement on the NPA. The FS consulted with State Historic Preservation Officers (SHPOs), Indian Tribes (including Tribal Historic Preservation Officers [THPOs]), and historic preservation organizations. While the official consultation periods amount to 180 days (6 months), the FS accepted comments outside the official consultation periods, as well. The National Heritage Program set up different inboxes where non-tribal consulting parties and Indian Tribes were able to separately correspond with Headquarters directly. Before every consultation period, the FS provided parties advance notice by hosting webinars and informational sessions, hosting a total of 14 sessions for both nontribal and tribal audiences. To accompany each updated version of the NPA, the FS provided a report outlining how comments were addressed or incorporated in the updated draft for consulting parties' review. While each consultation period has a slightly different methodology due to the pandemic, the FS National Heritage Program and Office of Tribal Relations managed comments and their responses.

First consultation period: 120 days (November/December 2019 to March 31st 2020). The first consultation period occurred on an outline of the NPA. In advance of the consultation period, the FS hosted 2 webinars for Tribes and 2 for State Historic Preservation Officers (SHPOs) and other consulting parties. During this consultation period, consultations primarily occurred at the Region or Forest-level and the content of those consultations was sent to the FS National Heritage Program and Office of Tribal Relations, if they were not present. The FS National Heritage Program and Office of Tribal Relations attended several of tribal consultation meetings by teleconference that were hosted by the Pacific Southwest Region (Region 5) and the Southern Region (Region 8). Plans to meet in person with Tribes at the conference, “To Bridge A Gap,” were disrupted by the pandemic. The FS continued to consult virtually with Tribes after the comment periods closed.

The FS received comments on the NPA outline from eleven (11) State Historic Preservation Officers (SHPO), twenty (20) Tribes (including Tribal Historic Preservation Officers [THPOs]), five (5) organizations, including National Trust for Historic Preservation and Coalition for American Heritage, and thirty (30) members of the public. The FS then revised the NPA in response to comments, preparing a formal packet of comments/responses, and preparing for another outreach. The report outlining the outcomes of the first consultation period can be found [here](#). All comments that were received helped shape the draft NPA that was shared during a second consultation period.

Second consultation period: 60 days (September 29th 2020 to December 4th 2020). The second consultation period lasted for a total of 60 days, after FS announced a 15-day extension. Due to the travel limitations and expanded telework in response to the pandemic, the second consultation period was virtual and directly managed by Headquarters, instead of individual Forests or Regions. In advance of the second consultation period, the FS implemented a similar outreach, consisting of 8 webinars for Tribes and 2 for SHPOS. The FS provided more webinar opportunities than originally planned for Tribes to account for the effects of the pandemic and natural disasters some were experiencing.

During and after the 60-day consultation period, heritage staff at Headquarters participated in 5 consultation meetings with THPOs and corresponded with several other Tribes. Of the five (5) consultation meetings, one (1) was a government-to-government consultation while the other four were Section 106 consultation meetings amongst staff. In total, the FS received comments from eight (8) SHPOs; fourteen (14) Tribes – two (2) of which said they had no comments; six (6) organizations including National Association of Tribal Historic Preservation Officers (NATHPO), National Trust for Historic Preservation, Society of American Archeology, Colorado Council of Professional Archaeologists, Oregon Wild, and American Cultural Resources Association; and twelve (12) members of the public. The report outlining the outcomes of the second consultation period can be found [here](#). All comments that were received helped shape this version, which the FS shared for public awareness.

Outcome of Consultation

In total, thirteen (13) SHPOs, approximately thirty-three (33) Indian Tribes, and nine (9) organizations (counting the two (2) signatories) provided comments, and FS met with five (5)



Indian Tribes, including one government-to-government consultation where ACHP participated, to discuss the NPA. Throughout the consultation process, it was apparent that most parties supported the NPA's earlier project consultation process and the NPA's encouragement of incorporating activities that enhance historic properties or cultural resources into the project design. However, comments also expressed concern about the HIP finalization process requiring only FS signature. To help meet those concerns, the FS clarified the consultation process required to develop the HIP and established a two-year monitoring period to ensure the NPA is applied correctly. The following were other concerns shared by diverse consulting parties, including SHPOs and Tribes.

- *Broad scope of NPA and when the PA is applicable*

In response, the FS added more specific criteria while still allowing FS units to apply the NPA for a variety of large-scale multi-year undertakings that require Section 106 to be phased. The FS clarified the NPA will not be used when the Project involves mineral, oil, and gas activities, when National Historic Landmarks may be affected, or on Tribal lands unless a Tribe chooses to have the NPA apply on their lands and becomes a signatory to the NPA.

- *Lack of accountability in implementing the HIP activities*

In response, the FS proposed the HIP require an annual monitoring and reporting to HIP consulting parties and signatories, thereby minimizing the chance that Project activities would be implemented without fulfilling commitments in the HIP. Additionally, the FS committed to provide Phasing PA training to Agency Officials and Heritage Professionals that will highlight how to track the implementation of the HIP and encourage a more robust internal coordination whereby Project activities would not be implemented prior to meeting the requirements in the HIP. Further, the FS is integrating Tribal consultation standards into Line Officers' performance review to help ensure accountability for conducting Tribal consultation in good faith.

- *Lack of third-party involvement in resolving disputes related to the finalization of the HIP*

In response, the FS proposed the ACHP be involved in helping resolve disputes related to the finalization and issuance of the HIP. The Agency Official must consider and respond to the comments received from the ACHP and concerned consulting parties before finalizing the HIP.

Tribal Consultation

The FS National Heritage Program worked closely with the Office of Tribal Relations to design the tribal consultation process related to development of the NPA. In addition to the concerns stated above, the following were other concerns shared predominately by THPOs and Tribes.

- *Request to be signatory to PA*

From the initial conceptualization of the NPA, the FS stated that it did not intend to invite signatories that are not required by the regulations when the NPA does not apply to Tribal lands. If a Tribe wishes to allow the application of the NPA on their Tribal lands, the NPA requires that Tribe to become signatory to the NPA. The NPA will not include invited signatories for any party.



- Concern that the identification efforts in the HIP did not adequately consider historic properties of interest to Indian Tribes.

In response, language from the ACHP's traditional knowledge report has been folded into determining level of good faith identification efforts, to take into account the role of the expertise Tribes provide in identifying historic properties of cultural and religious significance.

- Tribes requested more consultation in the NPA monitoring and HIP development.

In response, the FS proposed that Tribes receive notification of the annual reports on the NPA and the annual report of the HIP to be able to monitor both the NPA and HIP implementation. The FS also clarified that Tribes do not need to be a signatory to provide comments to the FS during the monitoring period. Further the FS proposed that Cultural Resource Stewardship Opportunities must consider their benefits to Tribes, and clarified that Tribes' level of engagement in larger consulting party groups does not substitute for government-to-government consultation.

SHPO Consultation

In addition to the concerns stated above, the following were other concerns shared by predominately by SHPOs.

- Request that the NPA would not interfere with the use of existing program PAs.

From the initial conceptualization of the NPA, the FS stated that it did not intend to mandate the use of the NPA. Instead, the FS maintained the NPA may be applied at the discretion of the Agency Official, in coordination with the Heritage Professional and consulting parties. The NPA does not invalidate Region-, State-, or Forest- level agreements that are in place. In response, the FS proposed an opportunity for consulting parties to object and consult on the applicability of the NPA for a specific Project. Further the FS has proposed to disqualify the use of the NPA in States where there is an existing PA, unless the relevant SHPO signatory to that PA agrees to apply the NPA.

Conclusion

Considering the effort the FS has given in developing materials that support consultation, such as the development and implementation of informational webinars, videos, info-sheets, and comprehensive reports outlining summary of comments received and responses for each round of consultation, the FS has consulted in good faith throughout the development of the NPA. The FS has also given considerable effort in meeting the requests made by consulting parties during each round of consultation, evidenced by how much each draft changed after each round of consultation and how comments were addressed. The FS recognizes that some parties may still have concerns regarding the HIP finalization process and the FS would like to assure those parties that the two-year monitoring process will assist in identifying whether any amendments are needed. The FS National Heritage Program has already been approached by two National Forests that are interested in utilizing the NPA and are willing to serve as pilot projects under the NPA, signaling the effectiveness the monitoring period will provide, as well as FS units' need and interest in the NPA.

