



Headquarters

Summary of Comments and Responses to the Forest Service National Programmatic Agreement Regarding Phasing of Large-Scale Multi-Year Undertakings (NPA)

Summary reflects the second consultation period (9/29/2020 – 12/5/2020)
September 2021

Contents

Introduction	2
Methods for Coordination, Consultation, and Public Comment	2
Most Frequent Comments.....	3
Additional Comments and Responses Organized by Topic	4
1. NPA Applicability and Scope	4
2. Staff Qualifications & Training	5
3. HIP Development Consultation Process	6
4. HIP Components including Issuance	8
5. HIP Implementation/Reporting	12
6. NPA Monitoring/Amendment.....	12
Need for NPA	13

Introduction

The Forest Service's (FS) proposed "National Programmatic Agreement Regarding Phasing of Large-scale Multi-year Projects" (NPA) aims to better sequence compliance with Section 106 of the National Historic Preservation Act for large-scale multi-year Projects. The NPA encourages Agency Officials to begin Section 106 consultation as early as possible in the Project development process to consider ways to consider historic properties in Project design. The NPA allows for a phased approach to Section 106 whereby some steps of the Section 106 process are completed after the Project decision, contingent on a "Heritage Implementation Plan" (HIP). The FS creates the HIP with consulting parties prior to the Project decision. The HIP outlines the Section 106 activities FS will complete throughout the planning and implementation of activities that make up large-scale multi-year Projects. To execute the NPA, the Advisory Council on Historic Preservation (ACHP), the National Conference of State Historic Preservation Officers (NCSHPO), and the Forest Service (Signatories) will sign the NPA.

Methods for Coordination, Consultation, and Public Comment

The NPA has undergone two periods of consultation, and the following report focuses on the second consultation period. To learn more about the first (120-day) consultation period from 2019-2020, please see the [Summary of Comments and Responses \(August 2020\)](#).

To prepare for the second consultation period, the FS revised the NPA draft in response to comments, prepared a formal packet of comment/responses (referenced above), and coordinated outreach. The outreach began prior to the start of the second consultation period to raise awareness about the upcoming consultation period. In late summer 2020, the National Heritage Program and Office of Tribal Relations began the outreach by providing parties an informational video that detailed the upcoming timeline for consultation and revisions made to the draft. The FS then hosted 8 Question & Answer sessions for Tribes and 2 for SHPOs to discuss any topics from the video or the draft NPA. The FS expanded the number of sessions provided to Tribal audiences beyond what the FS originally planned in order to provide more opportunities to engage with Tribes that might have been affected by the pandemic and natural disasters, such as fires and hurricanes, that were occurring in summer and fall 2020.

After the outreach program, the second consultation period officially began September 29th and ended December 4th 2020, lasting a total of 60-days after announcing a 15-day extension. Due to the travel limitations and expanded telework in response to the pandemic, the second, most recent consultation period, was virtual. Consultations were conducted directly with the National Heritage Program and in coordination with the National Tribal Relations Office located in Headquarters. Throughout the 60 days, Headquarters Office participated in five (5) consultation meetings with Tribal Historic Preservation Officers (THPOs) and corresponded with several other Tribes.

The FS addressed comments expressed by Signatories, Tribes, and consulting parties in this final draft of the NPA, which is being shared for information purposes. The FS received comments from Signatories; eight (8) State Historic Preservation Officers (SHPOs) (AZ, CO, CA, ID, IN, MT, NV, WA); fourteen (14) Tribes (two of which expressed they had no comments); six (6) organizations including the 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 following pages summarize those comments frequently received and FS responses.

Most Frequent Comments

The FS received about 770 verbal and written comments that were provided in red-lined drafts of the NPA, letters, or voiced in meetings. About 200 comments were editorial. Other than comments provided by members of the public that were unrelated to the NPA, the FS noticed the vast majority of comments received were targeted to improve discrete sections or language of the NPA, including how specific sections may be better organized, while a few parties questioned the overall purpose and need of the NPA. The FS has provided a discussion of the need for the NPA on the last page of this packet.

Comment Summary	Response
<p>Tribes requested to be more involved in the NPA monitoring and HIP development. Examples include requesting to be Signatory to the NPA, being involved in annual NPA meetings, receiving annual reports on both the NPA and HIP, developing identification strategies in the HIP for tribally significant resources, ensuring Tribal benefits are also considered in developing Cultural Resource Stewardship Opportunities, and notifying Tribes of emergency situations.</p>	<p>The FS has incorporated changes in the updated NPA in response to most of these comments. For example, language from the ACHP’s traditional knowledge report has been folded into determining level of good faith identification efforts, and Tribes will be notified of when annual reports have been published. Tribes do not need to be a Signatory to provide comments to the FS during the monitoring period. Tribes may sign onto the NPA to allow Projects to occur on their Tribal lands. The NPA will not include invited signatories.</p>
<p>SHPOS and Tribes requested FS to consult on the applicability of the NPA prior to its use, and for the NPA not to interfere with the use of existing state or region programmatic agreements (PAs).</p>	<p>The NPA now provides an opportunity for consulting parties to object and consult on the applicability of the NPA for a specific Project. It also requires use of existing applicable PAs with phasing provisions for a Project, unless the relevant SHPO signatory to that existing PA agrees to use the NPA. The FS clarified that the NPA optional and may be applied at the discretion of the local Agency Official, in coordination with an FS Heritage Professional and consulting parties. The NPA does not invalidate regional, state, or forest-level agreements that are in place.</p>
<p>Organizations requested the NPA clarify how the development of the Heritage Implementation Plan (HIP) will relate to the National Environmental Policy Act (NEPA) process.</p>	<p>The FS has made updates to clarify the timing of when a HIP development relative to Project development including the environmental review process. The NPA no longer applies to Projects that are categorically excluded and require no documentation.</p>



Additional Comments and Responses Organized by Topic

1. NPA Applicability and Scope

6 SHPOs, 6 Tribes, ACHP, NCSHPO, SAAs, NATHPO, Trust

Comment Summary	Response
<i>Tribes request to become signatory to NPA.</i>	Although the NPA will not have invited signatories, The FS created a process in the updated NPA for Tribes to become signatories to the NPA as required to allow the NPA to apply to Tribal lands, if they choose to use it for Projects on their Tribal lands. The FS clarified that the NPA does not apply to undertakings that may occur on or affect historic properties on Tribal lands, unless that specific Tribe becomes a Tribal signatory to the NPA, because the regulations only require ACHP and NCSHPO signature.
<i>Request for more clarity on Tribal signatory process, request for it to be on a project-by-project basis</i>	The NPA now provides more clarity and a template for Tribes to sign if the undertaking occurs on or may affect historic properties on Tribal lands. A Tribe may terminate the NPA on its Tribal lands and withdraw from the NPA, without changing the applicability of the NPA in other jurisdictions.
<i>Request for clarity on lands where this NPA can apply. Can this NPA be applied to non-Forest lands?</i>	The NPA may apply to Projects (such as “Shared Stewardship Projects”) that may include Federal, State, and private lands. The NPA may apply on Tribal lands only if the Tribe becomes a Signatory to the NPA.
<i>FS should ask for the SHPO and the Tribes' opinions for applying the NPA (when not located on Tribal land).</i>	The NPA now includes an opportunity for consultation on the applicability of the NPA. Parties may object to the NPA’s applicability on a proposed Project and the FS must take their comments into consideration and provide a response.
<i>Recommend clarifying HIPs are to be Project specific, not region, forest or state-wide as the NPA may suggest.</i>	Language has been added to clarify that a HIP is Project-specific, not programmatic for a Forest, State, or Region.
<i>Recommend specifying that the HIP and the NPA apply only when the FS has staff who meet the qualifications and training, and to account for vacancies.</i>	The NPA now specifies that the terms of both the NPA and any subsequent HIP may only apply to FS units with staff who meet the qualifications and training as described in Forest Service Manual (FSM) 2360, and now includes language to account for vacancies.
<i>The NPA should not invalidate current existing Programmatic Agreements.</i>	The NPA does not invalidate Region-, State-, or Forest-level agreements that are in place. HIP consulting parties may take inspiration from agreements that are already in place and incorporate processes that have been found to be successful into the HIP. This is meant to encourage



	modeling HIPs after successful agreements, not to use them in combination or invalidate them.
<i>Clarify whether HIPs are only used for compliance with this NPA or if other types of HIPs exist.</i>	Revised HIP template title ensures it is clear that the HIP is being used under the NPA, as the development and implementation of a HIP can only occur under the NPA.
<i>The applicability criteria need to better specify what Projects this NPA can apply to by providing an acreage metric and removing the phrase “but not limited to.”</i>	After much consideration, the FS does not apply an acreage metric in the applicability criteria for the NPA. An acreage metric would be arbitrary and perhaps disqualify Projects that need to be phased, such as linear Projects or Projects that include multiple similar discrete actions that are discontinuous across a Forest or a statewide scale. The NPA follows the language in the regulations regarding when undertakings may be phased.
<i>“Adaptive management,” as used in the NPA, is a misnomer and should be removed as a criterion.</i>	To avoid misinterpretation of the term, adaptive management has been removed as a factor to consider in determining whether the NPA is applicable.
<i>Project activities like special use permits, grazing, building roads and trails in Appendix B should not be included as they do not typically represent large-scale Projects.</i>	A variety of activities may tie to the purpose and need of a single large-scale Project, and the Appendix B lists common examples. For example, a large-scale timber harvest Project may require some bridge or road maintenance. Such actions are considered part of the large-scale Project.
<i>It is unclear how many HIPs the FS expects to draft in a year.</i>	The FS anticipates this NPA may be used as often as phasing is required in States where there is no other mechanism in place. The NPA anticipates that the disqualifying factors, including the new ones included in this updated version, will constrain the application of the NPA and number of HIPs developed in any given year.

2. Staff Qualifications & Training

3 SHPOs, 5 Tribes, ACHP, SAAs, NATHPO, Trust

Comment Summary	Response
<i>Reference to 36 CFR 296.8 should be deleted, and make Secretary of Interior’s (SOI) Professional Qualification Standards a requirement</i>	Reference was deleted; however the FS cannot mandate SOI qualifications as the FS follows OPM standards. Staff involved in HIP development must meet the qualifications in FSM 2360 and/or the SOI qualifications.
<i>The NPA should remove reference about the use of paraprofessionals.</i>	The reference has been removed, though the use of paraprofessionals would still be allowed per FSM 2360.
<i>District Rangers should be removed from the list of agency officials with the authority to use the proposed NPA.</i>	For the purposes of the NPA, District Rangers have authority to apply the NPA and develop the HIP. However, District Rangers’ authority have been limited so they cannot sign or issue the HIP.



<i>Will the training for FS staff be the same as the one offered to consulting parties?</i>	Yes, the training would be the same as the training provided to FS staff.
<i>Tribes should be included in the development of training information</i>	Tribes may have the opportunity to review the training during the 2-year monitoring period after execution, and suggestions will be taken into account during that time.
<i>FS should make the training more distributable and develop resources to assist in HIP development.</i>	The FS has committed to developing resources to assist in HIP development and plans to partner with ACHP to host the online training course through the ACHP website.
<i>Every HIP consulting party outside the FS must complete training 30 days prior to initial development of the draft HIP.</i>	While the FS recognizes the benefits of HIP consulting parties being familiar with the NPA & HIP development process, such a mandate was not included to avoid burdening HIP consulting parties.
<i>Suggestion for training to be required every 3 years to be allowed to participate in the NPA and HIP</i>	The training will be available on-demand and a 3-year requirement was not included to avoid burdening local staff. There is, however, a requirement that with staff changes, any new Agency Official or Heritage Professional (including acting positions) in a FS unit where a HIP is being used must take training within 90 days of entry on duty.
<i>How will SHPOs know who has completed training?</i>	SHPO or other HIP consulting parties may request proof of training from their Forest Service contact.

3. HIP Development Consultation Process

5 SHPOs, 7 Tribes, ACHP, ACRA, SAAs, NATHPO, Trust

Comment Summary	Response
<i>Consulting party list does not include mandatory consulting parties such as THPO and applicants.</i>	THPOs have been included wherever SHPO has been mentioned, and the HIP consulting parties have been expanded to include those parties with rights to consult under the regulation.
<i>Specific direction is needed regarding when consultation will be triggered and the NPA should not apply if the NPA is initiated too late in the process.</i>	The NPA clarifies that consultation begins early in the agency's planning stage of a large-scale Project. The NPA intends that Section 106 consultation begins early, but there is no consistent discrete point in time that identifies when it is too late in the process to initiate the NPA. For the first 24 months of implementation, the FS will monitor the use of the NPA for any indication of its misuse to determine if any amendments are needed.
<i>Request for greater number of meetings requirement while also pointing out minimum of numbers is restrictive and may be setting a low expectation.</i>	The NPA no longer includes a minimum number of meetings, recognizing that such a requirement may have been unnecessarily restrictive. The NPA now allows parties to determine the number and frequency that is appropriate for the scope and scale of the proposed Project.
<i>Recommend an early reference to 36 CFR 800.10, to ensure the Secretary of</i>	The NPA now specifies the terms of the NPA will not apply on Projects that may affect a NHL.





<i>Interior is involved at the earliest stages of planning if the Project may affect a National Historic Landmark (NHL).</i>	
<i>HIP consulting parties should consult on the reporting standards and reporting standards should match SHPO's.</i>	The NPA allows for such consultation. Reporting must meet agency standards (FSM 2363.16) and include information consistent with 36 CFR 800.11, unless HIP consulting parties negotiate otherwise.
<i>Tribal consultation and historic property information should be kept confidential, and any information obtained from Tribes cannot be distributed to other consulting parties.</i>	In the reorganization of the NPA, all the language relating to confidentiality concerns were placed in a separate stipulation in both the NPA and HIP template, so it is clear that confidentiality concerns must be managed to the extent required by law. The NPA now states confidential information must be redacted as appropriate before sharing with other consulting parties.
<i>Recommend explicit explanation that group meetings with multiple consulting parties do not fulfill the agency's government-to-government Tribal consultation obligations.</i>	The FS has added language about the unique government-to-government relationship with Tribes and language clarifying that group meetings where Tribes may be in attendance do not fulfill the agency's Tribal government to government consultation obligations.

Coordination with NEPA

4 SHPOs, 5 Tribes, ACHP, ACRA, SAAs. NATHPO, Trust

Comment Summary	Response
<i>Recommend this PA not apply for undocumented Categorical Exclusions (CEs) under NEPA.</i>	Language has been added to clarify the NPA may not be used for undocumented CEs.
<i>Concerns that the issuance of NEPA decision will hinder opportunity to redesign the Project to avoid adverse effects.</i>	HIP consulting parties will be invited to consult early on to help design the Project to avoid adverse effects. Parties will have another opportunity to avoid adverse effects as the Project is implemented, after the NEPA decision.
<i>What factors will determine the necessity of public meetings?</i>	Such language has been deleted from the NPA.
<i>When would it not be appropriate for HIP consulting parties not to be informed about NEPA public meetings?</i>	Deleted "as appropriate." To help inform Project design and the drafting of the HIP, the Agency Official shall invite HIP consulting parties to participate in any public or relevant stakeholder meetings related to the Project that may occur prior to and/or during the environmental review process.
<i>Telling attendees of meetings that they pertain to Section 106 should be required, not optional.</i>	The NPA now clarifies the utilization of this NPA and the HIP to meet 106 requirements needs to be presented upon at these meetings if the meeting will be used to meet requirements of Section 106.
<i>Language in the sample invitation letters should ensure that NHPA and NEPA are not conflated.</i>	The FS removed the sample letters from the appendices and will provide tools such as templates separately that make it clear that the letters are to initiate Section 106 of NHPA. The updated NPA has also taken out many



	references to the NEPA process to avoid confusion between the two laws.
<i>Timeline will be determined by the HIP rather than vice versa.</i>	The Project decision cannot be made before the HIP process, including consultation, has been completed.
<i>What is the relationship between the HIP's APE and what is covered in the NEPA analysis?</i>	The updated NPA no longer has a reference to the NEPA analysis area, because FS has tried to eliminate language in the NPA that conflates NHPA with NEPA. The HIP will document a process whereby the Agency Official will refine the APE, in consultation with HIP consulting parties, consistent with 36 CFR § 800.4(a)(1), as Project alternatives, if applicable, are clarified throughout the Project design and implementation.
<i>Recommend that the NPA include more detail on the process (e.g., developing a standard list O&M screened undertaking that don't require individual review) thereby limiting the amount of consultation required during individual HIP development.</i>	The FS recognizes that templates and examples may prove to be useful in the implementation of the NPA and plans to provide resources for FS staff to help initiate their consultation.

4. HIP Components including Issuance

Area of Potential Effects (APE)

3 SHPOs, 1 Tribe, ACHP, ACRA, SAAs, NATHPO, Trust

Comment Summary	Response
<i>Unclear when or how the Agency Official will refine the APE as Project alternatives are clarified throughout the Project design.</i>	The APE section has been consolidated to minimize duplication and confusion. The APE will be established by the Agency Official and FS Heritage Professional in consultation with the HIP consulting parties, consistent with 36 CFR 800.4(a)(1), as part of Project development. The HIP will then provide a process for how to refine/establish the APE for subsequent Project activities as they are identified after the Project decision.
<i>The APE must consider direct and indirect effects based on causality, not physicality.</i>	The NPA has been updated to reflect that the final APE will be the extent of the potential direct and indirect effects; visual or auditory effects are not considered only indirect effects.

Cultural Resource Stewardship Opportunity

2 SHPOs, 3 Tribes, ACHP, Trust

Comment Summary	Response
Cultural Resources Stewardship Opportunities (CRSOs) should be a mandatory component of the HIP and not optional.	Language was strengthened to mandate the consideration of CRSOs, but it remains up to Agency Official to include them.





If CRSO are developed early on in Project development, then won't they be included in the overall Project design as well?	They would be included in the overall Project design if the Line Officer adopts them.
Request that NPA further emphasize the importance of the stewardship opportunities in the NPA both early on and as clear tool that the FS should utilize.	More language has been added to elevate the CRSOs, including in the whereas clauses, clarifying that they must be considered early on.
Clarity requested about how CRSOs "do not resolve adverse effects, though the nature of their actions may be similar to mitigations measure."	The language was removed to avoid confusion. Such language was meant to clarify that CRSOs are different from mitigation measures, because they are not intended to resolve adverse effects under Section 106, they would be in addition to any required mitigation measures to resolve adverse effects.
Cultural Resource Stewardship opportunities should be for Tribes' benefit.	The CRSO definition has been revised to reflect this. CRSOs are now activities that mutually benefit the FS and HIP consulting parties, meet the Project's purpose and need, and would be reasonable (e.g., financially, logistically, etc.) to incorporate in Project design.
Who funds Cultural Resource Stewardship Opportunities?	Since it would be part of the Project design, the FS would fund it unless otherwise negotiated.

Identification Effort

7 Tribes, 4 SHPOs, ACHP, SAAs, NATHPO, Trust

Comment Summary	Response
<i>SHPO/THPO's and Tribes' approval should be needed for the HIP's reasonable and good faith identification effort and actions that pose little to no potential effect.</i>	The details of a reasonable and good faith effort to identify historic properties, and actions that pose little to no potential effect are informed by the Project and HIP consulting parties. Such activities will be decided upon in consultation. The NPA requires documentation of the consultation that leads to these decisions.
<i>Identification should address existing site data to consider the passage of time, incomplete prior evaluation, or changing perceptions of significance, and should acknowledge tribal views as well.</i>	The NPA now address this and includes a reference to 36 CFR 800.4(c)(1) and language from the ACHP's traditional knowledge paper that speaks to the importance of Tribal knowledge in identification efforts.
<i>Concern about the use of predictive models meeting the good faith identification effort.</i>	The NPA clarifies that remote strategies, such as predictive models, must be designed to meet a good faith effort to identify historic properties. Consulting parties would need to examine and discuss whether a predictive model would meet the good faith identification effort.
<i>Allowing eligibility to be determined by site type, not on an individual basis, is inappropriate.</i>	The NPA has been revised to reflect this.



Edit to reflect that inventory and consultation need to be completed prior to beginning Project activities.

The NPA has been revised to reflect this in various parts of the reorganized NPA.

Assessing Effects and Resolving Adverse Effects

3 SHPOs, 5 Tribes, ACHP, ACRA, SAA, NATHPO, Trust

Comment Summary	Response
<i>Without field data or, presumably, existing data, how can assessment of adverse effects occur?</i>	The FS Heritage Professional, in consultation with HIP consulting parties, will determine when ground truthing, including but not limited to pedestrian survey, is needed to supplement remote methods to identify historic properties. When there is a disagreement regarding the potential for adverse effects, that disagreement can be resolved through obtaining additional information.
<i>What is the process and timeline for making effect determination?</i>	The specific timing of the consultation process for making an effect determination is informed by the Project and HIP consulting parties. However, an effect determination must occur prior to implementation of the Project in a specific area where historic properties could be affected.
<i>HIPs should not be able to serve as Memorandums of Agreement (MOA).</i>	The NPA now provides an option for FS to outline mitigation actions in a MOA or through an amended HIP.
<i>Is the agency official providing proposed mitigation? What if the consulting parties, or just tribes, don't agree with the mitigation? Does that go through the dispute resolution process in this NPA or in the HIP? What's happening with the Project as that's sorted out?</i>	This would depend on the timing of when such mitigation measures are proposed- after or prior to the HIP issuance. Disputes among HIP consulting parties <i>after</i> a HIP is issued will be resolved through the HIP's terms. Disputes among HIP consulting parties before a HIP is issued are resolved through the NPA's terms. The terms of the NPA and HIP either have the option for or require ACHP involvement in resolving disputes and, in both cases, the FS must respond to comments prior to making a final decision.
<i>The Agency Official must notify SHPOs and Tribes of a finding of No Adverse Effect and provide thirty (30) days for SHPOs and Tribes to review.</i>	Under this program alternative s, the process for consulting on effect findings would be a negotiated in consultation with HIP consulting parties.
<i>Draft needs to recognize that alternative mitigation is not synonymous with off-site mitigation.</i>	Language has been edited to better define these kinds of mitigation approaches.
<i>Individual mitigation needs to happen for all sites</i>	As the regulations allow mitigation to address more than one site, such kind of a collective mitigation approach is a viable option that HIP consulting parties may consider.
<i>Unclear how post-review assessment may be both a technique to verify accuracy of adverse effects (if there is no baseline information) and as mitigation.</i>	This language has been removed from the NPA.



<i>Also unclear how such information will be used</i>	
<i>Clarify how disagreements on effect findings be addressed</i>	The HIP includes a dispute resolution process regarding any disputes that may arise in the implementation of the HIP.
Human Remains 1 SHPO, 2 Tribes	
Comment Summary	Response
<i>The development of a Plan of Action should be required.</i>	In the updated NPA, if a Project has a likelihood of encountering human remain, a Plan of Action must be completed prior to finalizing the HIP. A Plan of Action may be updated after the HIP is finalized by following the amendment process in the HIP.
<i>The section does not address non-Native remains</i>	This section addresses nonnative remains by saying “human remains”, and “follow state and local laws as applicable.”
Emergency 3 Tribes, ACRA, SAAs, NATHPO, Trust	
Comment Summary	Response
<i>Tribes need to be contacted</i>	The NPA has been revised to reflect this.
Duration 1 Tribe, 3 SHPOs, ACHP, Trust	
Comment Summary	Response
<i>If the NPA were to be terminated, a HIP built under the alternative to the 106 regulations should become invalid.</i>	The NPA has been revised so that the HIP must be developed into a project PA if the NPA were to be terminated.
<i>Duration of HIP needs to be defined in concrete terms, in years or a calendar date.</i>	The template now specifies that HIP consulting parties must insert calendar terms to specify the duration of the HIP.
HIP Issuance 6 SHPOs , 2 Tribes, ACHP, Trust	
Comment Summary	Response
<i>The SHPOs should be required to sign off and concur with the HIP along with the Agency Official.</i>	Although FS hopes that any disagreement on the HIP can be resolved at the lowest levels, a Tribe or any other HIP consulting Party can contact the ACHP to resolve disputes at any time during the development of the HIP or during the implementation of the HIP and the Project.
<i>There should be a process for internal objection for when there is disagreement between a Forest Archaeologist and Agency Official.</i>	Internal objections are handled as they usually would be. The Forest Service does not need to address it in a Section 106 agreement document.
<i>Are Indian tribes allowed to contact the ACHP at any point in the process?</i>	Tribes or any other party may request ACHP comment at any time.



5. HIP Implementation/Reporting

5 SHPOs, 3 Tribes, Trust

Comment Summary	Response
<i>Does the FS anticipate any additional staffing or funding for accomplishment of this work?</i>	The FS cannot predict whether additional funding or staffing will be available to the units where this NPA may be applied.
<i>Require HIP annual report to be sent to all HIP consulting parties.</i>	The NPA has been revised to reflect this.
<i>HIP reporting should be standardized to allow better understanding of how the HIP process was tailored by region/forest and in a manner that will allow replication by other forests of successful methods.</i>	The HIP reports, at a minimum, require a list of CRSOs initiated and completed, if applicable, and a list of Project activities completed and initiated under the Project in the previous year is required.
<i>What happens if the HIP isn't implemented prior to implementing activities?</i>	The FS would then be in foreclosure.
<i>HIP consulting parties should receive a weekly and monthly update regarding the implementation of the HIP.</i>	This is something that HIP consulting parties may negotiate. At a minimum, the FS Agency Official must provide an annual report on HIP activities.
<i>What if the report doesn't happen? Currently required annual reports often are late or never provided.</i>	The NPA now includes an alternative means of updating HIP consulting parties in addition to the report which can be delayed not more than 6 months from the original due date.
<i>A dispute resolution process involving the SHPO is recommended for disputes that arise on development or implementation of the HIP.</i>	If HIP consulting parties raise disputes during the implementation of the HIP, the Agency Official will convene a meeting or teleconference between all HIP consulting parties to consider their views and seek agreement regarding matters arising in the implementation of the HIP. Additionally, any party may contact the ACHP at any time using the dispute resolution process in the NPA and/or the HIP, as applicable.

6. NPA Monitoring/Amendment

3 SHPOs, 6 Tribes, ACHP, SAAs, NATHPO, Trust

Comment Summary	Response
<i>Request for longer monitoring period, to account for long-term nature of the Projects, including clarifying whether an amendment would trigger the start of another monitoring period.</i>	The monitoring period was expanded to be two years, instead of one. Another monitoring period would not be necessary, as the FS is still required to assess the implementation of the NPA through its annual reporting requirement.



<i>Various Tribes formally requested a copy of the nationwide annual report for the NPA to be submitted.</i>	Language has been included so Tribes and consulting parties will be notified of the annual report’s publication.
<i>Are the Tribes going to be invited to the monitoring meeting and other meetings thereafter?</i>	Tribes and other consulting parties may request a meeting with the FS or provide the FS and other Signatories with comments during the 24-month monitoring period for consideration among Signatories. As written, quarterly meetings are envisioned to be attended only by Signatories.
<i>Consulting parties, including Tribes, should be able to contribute to the narrative and evaluation of the performance of NPAs and suggest amendments.</i>	The FS expects the input of consulting parties, including Tribes, SHPOs, and staff, to evaluate the performance of the NPA throughout the two-year monitoring period. Throughout the monitoring period, consulting parties may also suggest amendments.
<i>Concern about signatories being able to make substantive changes in the amendments.</i>	With the NPA’s reorganization, some appendices have been removed, while the HIP template was added. The amendment process for both the body of NPA and appendices are now the same.
<i>Are the consulting parties ever notified or otherwise made aware of a dispute?</i>	The NPA now clarifies active HIP consulting parties will be notified of a dispute.

Need for NPA

The 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 large-scale multi-year Projects aligns with one of the purposes stated in the Forest Service’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 increasing the need for this NPA to allow phasing of Section 106.

Since 2014, the FS Heritage Programs recognized the increasing challenges of balancing the timelines associated with the implementation of large-scale multi-year Projects while ensuring Section 106 compliance to protect and preserve historic properties within these large Projects. These challenges stem from scale and scope of these Projects as well as the need for timely and effective Section 106 consultation early in the planning process. The Section 106 implementing regulations provide a solution to the FS under 36 CFR 800.4(b)(2), which allows for a phased approach to conduct identification and evaluation efforts in corridors or large land areas. This phased approach balances FS land management needs while adhering to compliance requirements by establishing a process for ensuring the views of consulting parties are taken into account during Project development. Also, as per the regulations, in order to proceed with a phased approach after a Project decision for these types of large landscape Projects, the execution of a memorandum of agreement or a programmatic agreement is required.



While a number of Forests have Forest-wide or region-wide PAs, most do not provide provisions to allow phasing Section 106 after a Project decision for large-scale multi-year Projects. In discussion with the ACHP, it was determined that a national programmatic agreement would be the best program alternative to address agency-wide needs to phase large-scale multi-year Projects after a Project decision. This nationwide program alternative will serve as an optional tool for FS Agency Officials and consulting parties to consider, especially those that do not have an existing program PA in place, to phase the Section 106 process after the Project decision.

