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The Forest Service’s multi-year projects that address landscape-scale issues can pose a challenge to timely compliance with Section 106 of the National Historic Preservation Act (NHPA). The NHPA requires agencies to consider the effects of their proposed action on historic properties, including properties of traditional religious and cultural significance to Indian tribe(s), prior to making decisions. The Phasing National Programmatic Agreement (Phasing NPA) provides an optional alternative process to help the Forest Service in its mission to protect and preserve historic and traditional cultural properties in America’s forests and grasslands for future generations.

**Background: Deferring & Phasing Section 106**

The Section 106 regulations allow for deferred and phased identification and evaluation of historic properties for projects that consist of corridors, large land areas, or where access to properties is restricted. Deferring and phasing Section 106 adjusts the standard Section 106 timeline so that identification and evaluation of historic properties may be completed after a project decision, completing Section 106 review over time but before project activities begin where historic properties may be affected in accordance with a project-specific Heritage Implementation Plan (HIP). For the purposes of the Phasing NPA, phasing means both deferring and phasing.



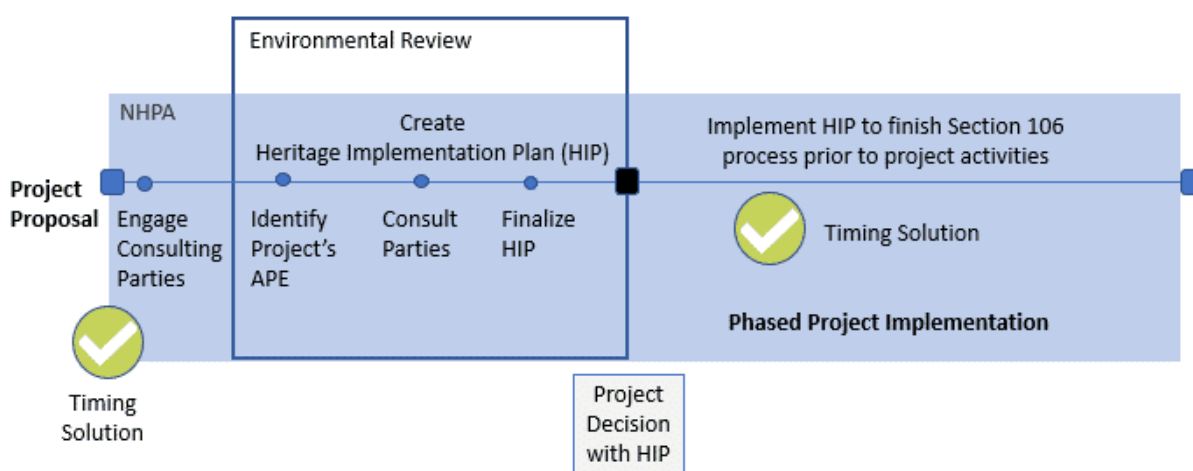
**Large landscape vegetation projects, like tree-thinning to prevent wildfires (above), commonly require phasing Section 106.**

The Phasing NPA provides a consistent national approach to phasing, allows timely project decisions, and provides a tool for forests to phase Section 106 without negotiating project-specific programmatic agreements.

### Summary of Proposed Phasing NPA

The Phasing NPA is not intended to replace any local, statewide, or regional phasing agreements. The NPA requires the agency to consult at the earliest stages of project consideration and design to develop a HIP. The HIP outlines the procedures and standards that fulfill Section 106 compliance and may include activities that enhance cultural resources or historic properties. The FS finalizes the HIP before or concurrent with the project decision, and the HIP is implemented after the project decision, throughout the life of the project.

### Diagram of the Process Outlined in the Proposed Phasing NPA



### Monitoring Period

The FS has committed to monitoring the use of the Phasing NPA for the first two years after it is executed. The FS invites consulting parties to comment on how the agency is implementing the Phasing NPA. The Forest Service will review comments received and coordinate with other Signatories to consider whether any improvements can be made to the NPA. Tribal representatives should direct their comments to [SM.FS.HeritAgrmnt@usda.gov](mailto:SM.FS.HeritAgrmnt@usda.gov) and members of the public or other interested parties may direct their comments to [SM.FS.HeritAgrmnt2@usda.gov](mailto:SM.FS.HeritAgrmnt2@usda.gov).



# Phasing National Programmatic Agreement (NPA) Frequently Asked Questions (FAQs)

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## 1. What does this programmatic agreement do?

The FS's large-scale projects usually require the agency to complete the Section 106 process *after* a decision is reached, which typically requires project-level programmatic agreements or memoranda of agreement. The Phasing NPA provides the agency an optional alternative to documenting how the agency will complete Section 106 after a decision, providing consultation begins early in project consideration and planning.

## 2. What does phasing Section 106 mean?

For the purposes of the Phasing NPA, phasing refers to both deferring and phasing. As such, phasing refers to incrementally completing Section 106 for the undertaking after a project decision, but before activities are implemented that could affect historic properties. Under the Phasing NPA, the FS develops a HIP in consultation with consulting parties at the early stages of project planning. The HIP outlines the agency's commitment to completing Section 106 after a project decision, but prior to implementing aspects of the larger undertaking.

## 3. What does an Agency Official (Line Officer or Unit Leader) need to do to use the Phasing NPA?

Under the terms of the Phasing NPA, the Agency Official must coordinate at the earliest stages of the project consideration with the Heritage Professional. The Heritage Professional must then review the proposed project against the criteria of the Phasing NPA before providing the Agency Official a *written* recommendation about whether to apply the NPA or not. The Agency Official, Project Planners, and the Heritage Professional must complete training before using the Phasing NPA.

## 4. What types of projects does the Phasing NPA cover?

A FS unit may use the phased Section 106 process in the Phasing NPA and subsequent HIP for a project when the following criteria are met:

- a. The FS unit staff applying the Phasing NPA and HIP meet the qualifications and training requirements (Sections II and III); and
- b. When Project implementation is proposed to last more than two calendar years from the date the of the Project decision; and
- c. When alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted; and
- d. When the identification of and/or the effects on historic properties cannot be fully determined prior to authorization of a Project; and
- e. When the project does not meet any of the disqualifying criteria (see section IV.C. of the Phasing NPA)



## 5. What types of projects does the Phasing NPA disqualify?

A FS unit may not apply the Phasing NPA for projects that:

- 1) Occur on Tribal lands or have the potential to affect historic properties on Tribal lands, unless the Tribe has become a Tribal Signatory to the Phasing NPA, or
- 2) Involve mineral, oil, and/or gas extraction, exploration, transport, or other related activities, or
- 3) Include activities that would infringe on or adversely alter the legal rights of any Tribal sovereign nation and/or its Tribal members as guaranteed in treaties, agreements, and other legal instruments that allow access to and use of natural and cultural resources including, but not limited to plants, animals, water, minerals, and other land resources, or
- 4) Include activities with the potential to affect a National Historic Landmark, or
- 5) Comply with NEPA via categorical exclusions listed at 36 CFR § 220.6(d), which do not require a project or case file and decision memo, or
- 6) Consist entirely of activity types that are covered under an existing PA with phasing provisions that is in effect and applicable to the FS unit where the Project is proposed, unless the relevant SHPO signatory to that active and applicable PA agrees to apply the terms of the NPA in writing.

## 6. We're used to working under an existing PA that allows phasing. Can we continue to use it or does this NPA supersede it?

If the project may be reviewed under an existing programmatic agreement (PA), the relevant SHPO signatory to the existing PA must agree to use the Phasing NPA. If the SHPO does not agree to apply the Phasing NPA instead of the existing local or statewide PA, the FS may not apply the Phasing NPA to that project.

## 7. Can this NPA be utilized for projects that include Tribally owned lands?

If the project will occur on Tribal lands or have the potential to affect historic properties on Tribal lands, the Tribe must become a Tribal Signatory to the Phasing NPA for the FS to apply it. If the Tribe does not become a Tribal Signatory to the NPA, the FS may not apply the Phasing NPA to that project.

## 8. What if consulting parties do not agree with the FS proposing to apply the NPA for a specific project?

Consulting parties may express written concerns or disagreement about the use of the NPA, providing a reason why the Project does not meet the applicability criteria under Section IV. The Agency Official, in coordination with the FS Heritage Professional, will then consider views of the concerned party or parties and provide them a final decision regarding the application of the NPA within thirty days (30) days of receiving parties' written concerns about the use of the NPA.

## 9. What are Cultural Resource Stewardship Opportunities (CRSOs)?

CRSOs are activities that the Agency Official has opted to include in project design that recognize, preserve, protect, and enhance cultural resources for the greatest public benefit (FSM 2360.2), including benefits to Tribes. CRSOs are 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. Examples include but are not limited to enhancement of historic properties and landscapes; development of historic contexts, interpretation, traditional cultural property studies, nominating sites to the National Register, and other similar activities.

### 10. What is the Heritage Implementation Plan?

The Heritage Implementation Plan (HIP) is a plan that outlines how the FS will comply with Section 106 after a project decision. The FS, SHPOs/THPOs, Tribes, and other interested parties develop the HIP, which includes identification methods and actions to resolve adverse effects (if any are found). The HIP may also include CRSOs. The relevant Forest Supervisor signs the HIP prior to the project decision, and the HIP is maintained in the project record.

### 11. Is there a template of a HIP?

There is a sample template for the HIP and the Phasing NPA outlines provisions that the HIP must include, however the content of the HIP is flexible depending on what the FS Agency Official determines is the best way to meet their Section 106 responsibility in consultation and coordination with the Heritage Professional and consulting parties.

### 12. Who are HIP consulting parties and how do you become one?

HIP consulting parties are entities that have a consultative role in the Section 106 process as defined by 36 CFR § 800.2(c). Signatories, SHPOs/THPOs, Tribes, applicants, and local governments with jurisdiction will be accepted as HIP consulting parties, but parties may also include other affected agencies, and any additional entities invited to participate due to the nature of their legal or economic relationship to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties (36 CFR § 800.2(c)(5)).

### 13. What are HIP consulting parties' role?

HIP consulting parties are invited to provide input on the Section 106 process the FS will implement after the project decision, as outlined in the HIP. They can also propose CRSOs for the FS to consider incorporating in the project design.

### 14. How do you become a HIP consulting party?

Normally, the Agency Official will invite parties that they identify as potential HIP consulting parties. If you are interested, you should submit a request to the Agency Official, who will then decide whether to accept any other party as a HIP consulting party.

### 15. Are Cultural Resource Stewardship Opportunities (CRSOs) required?

The Agency Official is required to seek consulting parties' input about potential CRSOs and consider CRSOs that have been proposed by consulting parties. The Agency Official should consider whether proposed CRSOs 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. The Agency Official is not required to incorporate CRSOs into the project design.



### 16. How will this HIP affect everyone's workload?

Consultation is required under the NHPA. The Phasing NPA requires consultation to begin early and does not necessarily add work. The extent of engagement and level of collaboration is at the discretion of FS and consulting parties throughout the development and implementation of the HIP. As with the standard Section 106 process, the FS Agency Official is required to make a good faith effort to consult.

### 17. What if SHPOs/THPOs, Tribes, and interested parties do not have time for early collaboration on project design and/or development of the HIP?

Participation is optional, but the FS encourages all parties to participate in consultation on project proposals. Early collaboration results in well-designed projects that avoid areas of high sensitivity and include outcomes beneficial to cultural resources.

### 18. What if consulting parties do not agree with the FS on what is reasonable to include in the HIP?

The intent of consultation while developing the HIP is to seek agreement among FS and consulting parties on its content. If there are unresolved concerns with the HIP at the time the FS proposes to finalize the HIP, the FS and consulting parties must follow the disagreement process outlined in the Phasing NPA (Section IX.B.3.i).

### 19. What training is provided for the implementation of the Phasing NPA?

There is an e-Learning course that is available to staff through AgLearn and available to interested parties on the FS website. The Phasing NPA requires FS Agency Officials, Project Planners and Heritage Professionals to complete the training before they use the NPA.

### 20. How will the Forest Service ensure that the HIP is implemented for multi-year projects?

Under the NPA, FS units implementing a HIP must provide an annual report, which should help ensure that projects are tracked and accounted for. Consulting parties are also encouraged to collaborate with the agency in implementing the HIP.

### 21. What can we provide comments about during the monitoring period?

Parties can provide comments about the implementation of the Phasing NPA, including the HIP template, FAQs, training materials, resources, or stipulations in the NPA itself. These comments will help the Forest Service make any necessary adjustments to improve the implementation of the Phasing NPA.

