



# National Programmatic Agreement for Phasing Section 106 “Phasing NPA” Tribes & Tribal Historic Preservation Offices (THPOs)

## Your Role

As a Tribal representative or THPO, you will be invited to consult to develop the Heritage Implementation Plan (HIP) and project design as a “HIP consulting party.” A HIP consulting party is any entity that has a consultation role in the Section 106 process defined by 36 CFR § 800.2(c), such as SHPOs/THPOs, Tribes, applicants (if applicable), and local governments with jurisdiction (if applicable).

The following opportunities are the primary areas where a Tribe or THPO may participate:

- **Application.** Within 30 days of receiving the Forest Service invitation to consult on the development of the HIP, a Tribe or THPO may accept the invitation or raise concern about applying the NPA based on the Phasing NPA’s criteria. If another existing phasing PA could be used for the project, the SHPO must agree to use the NPA instead of the existing one. If concerns are raised by any party, the Forest Service must address them through reasonable and good faith efforts to consult to understand and respond to concerns.
- **Development of HIP.** If the Forest Service proceeds to develop the HIP, the Forest Service will send HIP consulting parties a package of available information about the project. At this point, the Tribe or THPO may begin to consider proposing any activities that recognize, preserve, protect, and enhance cultural resources or historic properties that may be appropriate for Forest Service to incorporate into the project. The Forest Service may invite a Tribe or THPO to other meetings related to the project and its environmental review process. A Tribe or THPO should expect a minimum of two opportunities to review the HIP, one of which is the final review period that requires 30 days.
- **Finalization of HIP.** A Tribe or THPO must receive a final 30-day review period before the Forest Service issues the signed HIP. If a Tribe or THPO expresses support or does not respond within 30 days, the Forest Service agency official may proceed to issue the HIP through signature. If a Tribe or THPO sends a letter of concern within 30 days of receipt, the Forest Service will attempt to resolve them. If the Forest Service cannot resolve such concerns, the Forest Service or a Tribe or THPO must request the Advisory Council on Historic Preservation (ACHP) to comment. After the ACHP provides comments to the Forest Service, the Forest Service will decide how to proceed. If the Forest Service decides to issue the HIP, a Tribe or THPO will receive a copy of the signed HIP.
- **Implementation of HIP.** After issuing the HIP, the Forest Service must fulfill the commitments outlined in the HIP. At minimum, a Tribe or THPO should expect to receive annual reports regarding the HIP’s implementation, along with any other consultation the HIP requires.

At any point throughout the HIP development process, HIP consulting parties may request the ACHP to participate in the consultation or provide comments.

## Important Considerations

- **Application on Tribal lands.** If the proposed project has an area of potential effect that extends to Tribal lands, the relevant Tribe must become a Tribal Signatory to authorize use of the Phasing NPA for the project. Otherwise, the Forest Service cannot apply the Phasing NPA for the project that has the potential to affect Tribal lands.
- **Tribal Signatory.** A Tribe may become Tribal Signatory by sending Appendix D, signed by an authorized Tribal Official or designated representative, to the Chief or designated Agency Official. Once a written and signed notification is received by the Forest Service, the Tribe will become Tribal Signatory to the NPA and provisions of the NPA will be applicable to the proposed Project(s) that may occur on or affect historic properties on that Tribe's lands. The THPO, if applicable, will serve as the SHPO for Projects on Tribal lands. If a Tribal Signatory terminates the Phasing NPA, the Phasing NPA would no longer apply on the Tribal lands under the jurisdiction of the Tribal Signatory. The Phasing NPA's applicability on lands outside the Tribal Signatory's jurisdiction would be unaffected.
- **Confidentiality.** Early on, Tribes or THPOs should express if there are any confidentiality concerns that the Forest Service should be aware of for the HIP development, issuance or implementation. Upon receiving such expressions of concern, the Agency Official and Heritage Professional shall use best efforts to protect sensitive information from disclosure to the extent permitted by federal law.
- **Plan of Action for Native American human remains or funerary objects.** If Project activities have a likelihood of encountering Native American human remains or funerary objects, the Forest Service must consult with the relevant Tribe(s) and develop a Project specific Plan of Action (per 43 CFR § 10.3) prior to finalizing the HIP. A Plan of Action may be updated after the HIP is finalized by following the amendment process established in the HIP.

## More information

This presents a very brief overview of Tribes' and THPO role. For more details, please review the Phasing NPA and other materials on the [Phasing NPA webpage](#). To provide comments or suggestions on improving the use of the Phasing NPA during the 2-year monitoring period (December 2021- December 2023), please email them to [SM.FS.HeritAgrmnt2@usda.gov](mailto:SM.FS.HeritAgrmnt2@usda.gov).