



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

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Introduction

The Forest Service (FS) is proposing the National Programmatic Agreement Regarding Phasing of Large-scale Multi-year Projects (Phasing PA) to better sequence compliance with Section 106 of the National Historic Preservation Act for large-scale multi-year Projects through earlier consultation. The Phasing PA allows for a phased approach to Section 106 whereby some steps of the Section 106 process are completed after the National Environmental Policy Act (NEPA) decision document, contingent on a “Heritage Implementation Plan” (HIP). The FS creates the HIP with consulting parties prior to the NEPA decision. The HIP outlines the Section 106 activities FS will complete throughout the planning and implementation of activities that makeup large-scale multi-year Projects. To execute the Phasing PA, the Advisory Council on Historic Preservation (ACHP), the National Conference of State Historic Preservation Officers (NCSHPO), and the Forest Service (signatories) will sign the PA.

Methods for Consultation, Coordination, and Public Comment

In Fall 2019, FS hosted a webinar for Tribes to provide advance notice about the Phasing PA. From late 2019 to March 31st, 2020, the FS engaged Tribes for their input on an outline of the Phasing PA during a 120-day consultation period. The content of consultations that occurred at the Region or Forest-level were sent to the National Heritage Program and Office of Tribal Relations. The FS National Heritage Program and Office of Tribal Relations attended several of tribal consultation meetings by teleconference hosted by the Pacific Southwest Region (Region 5) and the Southern Region (Region 8). The FS National Heritage Program and Office of Tribal Relations also received comments directly via the email-inbox that was set up to receive comments only from Tribes. Plans for in-person consultation meetings that were organized by the Regions during the last 30 days of the consultation period were disrupted by the pandemic. All comments that were received helped shape the July 2020 draft.

The FS began coordination with signatories in late 2018. From Fall 2018 to Spring 2019, the FS developed the outline with some input from ACHP staff, NCSHPO, and consulting party, National Association of Tribal Historic Preservation Officers (NATHPO). The FS invited signatories to webinars hosted in Fall 2019. The FS engaged signatories for their input from December 2019 to January 2020. The FS National Heritage Program and Office of Tribal Relations received comments directly via the email-inbox that was set up to receive comments only from nontribal consulting parties.

The FS began similar coordination in late 2018 with consulting parties, NATHPO and the National Trust for Historic Preservation (the Trust). Consulting parties were invited to the webinars in Fall 2019. In early 2020, Coalition for American Heritage (CAH) joined as a consulting party, representing the Society for American Archeology (SAAs). The FS engaged consulting parties for their input from December 2019 to January 2020 and received comments directly via email.

The Forest Service invited the public for comment through online platforms and email for 60 days until March 1st, 2020. The outreach was shared about 150 times and the FS was able to receive comments from 30 members of the public, though no member of the public sent an email to the appointed email address for non-tribal parties.

The comments received from all parties were reviewed and organized by theme. Signatories, Tribes, and consulting parties expressed similar concerns regarding the PA outline. The FS held a meeting with signatories and consulting parties on January 22nd, 2020 to discuss the outline and major concerns. The FS addressed comments expressed by signatories, Tribes, and consulting parties in this draft PA. The following pages summarize comments frequently received and FS responses.



Summary of Most Frequent Comments with Forest Service Responses

The Forest Service received comments from 66 individuals, organizations, and State and Tribal governments including eleven (11) State Historic Preservation Officers (SHPO), 20 Tribes (including Tribal Historic Preservation Officers [THPOs]), 30 members of the public on the Phasing PA outline. The 30 public comments were general in nature and not related to the Phasing PA. Included in the total are 2 signatories and 3 consulting parties. Among the comments, 77 were editorial corrections and/or recommendations for clarifying language, and 418 were substantive comments on the PA. Signatories and Tribes expressed similar concerns regarding the PA outline. The following provides an overview of the most common substantive comments and the agency's response.

Major Concerns	Response
<i>Broad scope of PA and when the PA is applicable</i>	The PA now clarifies when the PA is applicable, by adding more specific criteria. For example, the PA is applicable when the Project meets two or more of the following criteria: when the Project is expected to last more than 2 years; when the Project is based on an adaptive management approach under NEPA; and when identification of and/or effects on historic properties cannot be determined. The FS clarified what types of Projects can use the Phasing PA. Through the Phasing PA, the agency's intent is to create a process that is flexible enough for the various large-scale vegetation management Project types that occur across the nation. The document now clarifies that the PA will not be used when the Project involves mineral, oil and gas activities.
<i>Lack of clarity in consultation process to develop the HIP</i>	The agency's intention has always been for the HIP to be developed with consulting parties such as SHPO, Tribes, representatives of local governments, applicants and additional interested parties pursuant to 36 CFR 800.2. The PA now clarifies the HIP will be developed in consultation with these parties. There are now minimum requirements for consultation to develop the HIP: a minimum of 2 meetings, including one informal review of the HIP outline or draft; and one final 30-day review (separate from other public comment periods related to other planning processes).
<i>Lack of accountability in implementing the HIP activities</i>	The PA now proposes more robust internal coordination whereby Project activities would not be implemented prior to meeting the requirements in the HIP. The HIP also requires annual monitoring and reporting to HIP consulting parties, thereby minimizing the chance that Project activities would be implemented without fulfilling commitments in the HIP. Additionally, the FS will provide Phasing PA training to Agency Officials and Heritage Professionals on how to track the implementation of the HIP.
<i>Lack of third-party involvement in resolving disputes related to the finalization of the HIP</i>	The ACHP may be involved in helping resolve disputes related to the finalization and implementation of the HIP. The Agency Official must take into consideration the comments received from consulting parties, and one or more Heritage Professionals, before finalizing the HIP. The HIP template includes a dispute resolution section for HIP consulting parties, which may include the ACHP, to resolve any issues during development of implementation of the HIP.



Additional Comments and Responses Organized by Topic

PA Applicability and Scope

Seven (7) SHPOs and Seven (7) Tribes commented on the applicability and scope of the PA.

Summary of Comment	Response
<i>Unclear what “non-FS lands” were, where the PA would be allowed.</i>	The term “non-FS lands” was taken out to avoid confusion. The PA is only applicable to Projects in National Forest System lands.
<i>Unclear whether PA would apply on Tribal lands</i>	The PA does not apply on Tribal lands. The draft now clarifies the process for Tribes to allow use of the PA when the undertaking may affect historic properties on Tribal lands.
<i>Opposed to the concept of nationwide programmatic agreements that may affect properties on Tribal lands</i>	The PA allows for local consultation and the development of a HIP to suite local conditions and needs. The PA does not apply on Tribal lands. However, the draft now provides an opportunity for a Tribe to allow use of the PA when an undertaking may occur on tribal lands or affect historic properties on tribal lands. See above comment.
<i>Concern and confusion how other programmatic agreements would be used in combination with this nationwide PA.</i>	The ability for the PA to be used in combination with other PAs was taken out to avoid confusion and gray areas of using multiple legal frameworks for one undertaking. The draft PA now encourages parties to incorporate any provisions they have established in previous agreement in the HIP, instead of using those previous agreements.
<i>Definition of large land areas with acreage.</i>	Setting an arbitrary minimum range of acreage would not add value to defining when a Project may be suitable for phasing under this PA. The PA does not include a set of minimum acreage to help define large land areas. The agency has added additional criteria than those already established in the regulations to allow a phased approach (see below).
<i>Discrepancy between kinds of undertakings listed as examples in the FAQ and the outline’s preamble. Request for list of all programs for which the PA may be used.</i>	In response to comments, the current draft now excludes certain kinds of Projects that were formerly listed in the FAQ. The draft PA does not intend to set strict parameters on what kinds of Projects will be phased. The PA sets up a process that would be applicable for any kind of phased Project (except for those that include gas, mineral, and oil activities). Therefore, a comprehensive list may limit the effectiveness of the PA. However, in order to provide an idea of the kinds of activities that may occur, the list of examples of types of Projects has been expanded. The HIP would define the Projects in detail in coordination with HIP consulting parties.
<i>Wildfires should not be in list of Project examples, because they cannot be planned.</i>	Wildfires have been removed from the list of examples, and the HIP will now include emergency provisions.



<i>Comment about appropriateness of phasing facility maintenance and special use permits.</i>	Facility maintenance and special use permit activities often occur in large vegetation management projects. For example, a large-scale Project may have a facility in the project area, such as a campground, and the Project may include some maintenance for the facility. Another common example is a large-scale timber harvest Project that requires some bridge or road maintenance. Such actions are considered part of the large-scale Project.
<i>Appendix with listed activities are examples of activity types that could cause adverse effects to historic properties</i>	The PA recognizes that the listed activities may affect historic properties and these activities are not exempt from Section 106. The listed activity types may be included in a large-scale multi-year Project for which phasing Section 106 compliance is required. The Project-specific HIP will include a process for making findings of effect and resolving adverse effects for activities included in the Project.
<i>The Forest Service should not have sole discretion to decide that a Project is suitable for phasing under this PA.</i>	The draft PA now includes a more robust decision-making process about whether a Project is suitable for the use of the PA. Using their professional judgement, the Heritage Professional will verify the use of the PA is appropriate for a certain Project according to the new criteria and recommend use of the PA to the Agency Official. Although there is not a requirement for consulting parties to concur in the HIP process, consulting parties may request the ACHP to participate in the development of the HIP at any time. There is also a termination clause so that if the signatories, ACHP and NCHPO, feel that the FS is not abiding by the terms of the PA, they may begin the process to terminate it.
PA duration & monitoring	
<i>The PA should have a duration clause</i>	The PA now has a 10-year duration clause.
<i>Concern over “all state-specific FS- SHPO ‘protocols developed under the authority of this agreement will be terminated” if the PA were to be terminated signatories</i>	The PA has omitted this language.
<i>The PA should have periodic review</i>	The PA now has annual reviews with signatories as well as a robust monitoring period for the initial 12-months of the PA.
<i>The PA annual report should be sent to signatories, not only upon request</i>	The PA now clarifies that a copy of the nationwide annual report will be made available online and be sent to ACHP, NCSHPO, and NATHPO.



Staff Roles, Qualifications, and Training

Among the comments received, nine (9) SHPOs and four (4) Tribes commented on staff roles, qualifications, and training for Heritage Professionals who will carry out the terms of the PA as well as Agency Officials who will have approval authorities for HIPs and other decision points.

Summary of Comment	Response
<i>Minimum staff qualifications for Heritage Professionals should include Secretary of Interior's Professional Qualification Standards</i>	The Secretary of Interior's Professional Qualification Standards are now a qualification that may be met. The Heritage Professionals would need to meet one or more qualification standards found in Forest Service Manual 2360, 36 CFR 296.8, or the Secretary of Interior's Professional Qualification Standards in Appendix A to 36 CFR 61.
<i>Include a clear process for designating the Agency Official for each undertaking as well as a process for notifying the SHPO and Tribes about who the Agency Official is.</i>	The PA clarifies that the Agency Official is the same as the Responsible Official for NEPA decisions. Consulting parties will know who the designated Agency Official is because the letter inviting consulting parties to develop a HIP, pursuant to the PA, will be signed by the Agency Official for a given Project.
<i>Training should be developed in coordination with SHPOs and Tribes.</i>	The FS will work with ACHP and NCSHPO to develop a standardized Phasing PA training, including trainings for Agency Officials and for Heritage Professionals. The PA allows for the agency and consulting parties to develop and deliver trainings specific to a Project.
<i>Training should be available for SHPOs and Tribes.</i>	The FS will make the National Phasing PA standardized online trainings available to consulting parties. The PA allows for the agency and consulting parties to develop and deliver trainings specific to a Project.

NEPA and Section 106 intersections (meetings, timing of HIP finalization)

The FS received comments from seven (7) SHPOs and four (4) Tribes about the relationship between the NEPA process and the process for complying with the implementing regulations for Section 106 of the NHPA.

Summary of Comment	Response
<i>Question about whether the PA proposes using the NEPA process for Section 106 purposes pursuant to 36 CFR 800.8 (often called "NEPA substitution").</i>	The PA does not allow the NEPA process to substitute the Section 106 process under 800.8. The provisions of the PA remain a separate process that encourages FS units to consider their Section 106 responsibilities as early as possible in Project development, including early stages of the NEPA process. The PA recommends coordinating public participation, analysis, and review, in accordance with 36 CFR 800.8(a)(1). Additionally, the PA makes clear that NEPA review activities, including public involvement activities, do not satisfy the need for consultation under Section 106.
<i>It is unclear when the HIP should be finalized</i>	The PA now clarifies that the HIP must be completed before the NEPA decision document (Decision Memo, Finding of No Significant



	Effect, Record of Decision). However, the draft of the PA allows for a HIP amendment process that the FS may use to incorporate new information learned through continuing consultation, such as new mitigation measures.
<i>The various NEPA documents and associated analyses vary tremendously in terms of how much time is required. How will the development of a HIP not be rushed when there are substantial cultural resource concerns that fall into a CE or EA situation?</i>	The PA intends to provide ample time for HIP consulting parties to finalize the HIP before the NEPA decision by encouraging very early coordination and consultation. The PA also allows for phasing identification, evaluation, and resolution of adverse effects (as necessary) after the NEPA decision. The PA has not changed the timing of the HIP’s finalization in relation to the NEPA decision. However, the current draft of the PA allows for the HIP to be amended if new information arises.
<i>NEPA should not be given priority over Section 106</i>	The Phasing PA intends improve the relationship between the Section 106 regulatory process by beginning the Section 106 process as early as possible, during or before the planning period under the NEPA process.
<i>Unclear what kinds of NEPA meetings were being referred to in the phrase, “Invite Tribes, SHPO, and others to participate in group meetings that the Forest Service as already established.”</i>	The PA now clarifies that those meetings will be public meetings related to the NEPA review process under section V.C. The PA makes clear that any public meetings under other planning processes, including NEPA review, do not satisfy Section 106 consultation responsibilities in and of themselves.
<i>Clarification requested on whether NEPA public scoping meetings will serve as Section 106 consulting party meetings</i>	The PA is written to allow for a broad range of coordination and consultation. The PA states that HIP consulting parties must be informed of the NEPA public involvement activities, including public meetings. These public meetings alone do not satisfy the need for consulting HIP consulting parties. Public meetings may be used to engage the public and HIP consulting parties, if HIP consulting parties attend those meetings.
<i>Consultation may be limited because SHPOs may not be able to participate in in-person meetings due to logistical and fiscal limitations.</i>	The PA now clarifies that consulting parties’ participation in consultation meetings for Section 106 may be virtual or in-person.
<i>Comment that “For the successful implementation of the proposed process, the initial consultation package <u>must</u> be sent out prior to NEPA public engagement.”</i>	The consultation package is not required to be sent prior to public engagement under NEPA, but early coordination is encouraged. In order to provide flexibility to local conditions, the PA requires the initial consultation package to be sent as early as possible.



<i>Tribes have significant confidentiality concerns about the HIP being available to the public, as an attachment to the NEPA document (VII.b.ii.)</i>	A HIP shall protect sensitive information to the fullest extent practicable following, among other applicable laws, relevant provisions of Section 304 of NHPA, Section 9 of the Archaeological Resources Protection Act, Title VIII Subpart B of the Conservation, and Energy Act of 2008 (“2008 Farm Bill”) (PL 110-234) and Section 552(b) of the Freedom of Information Act in response to any concern regarding confidentiality and privacy raised by Tribes. Additionally, consulting parties may as the Forest Service to redact sensitive information or make a separate public-facing document. The Forest Service may also incorporate the HIP by reference in the NEPA decision document, which will not make the HIP publicly available.
<i>The PA does not require the completion of S106 before the commencement of Project activities.</i>	The PA now includes a provision requiring internal FS coordination to ensure Section 106 activities are complete before Project activities that could affect historic properties begin. This is made clear throughout the PA (for example, in the whereas).

Consultation (HIP Development)

The FS received comments from nine (9) SHPOs and eight (8) Tribes regarding consultation.

Summary of Comment	Response
<i>Request from Tribes to be signatory to PA, or for NATHPO to be signatory to PA</i>	The FS does not intend to invite signatories that are not required by the regulations. This PA does not apply to Tribal lands. Additionally, the FS understands that NATHPO does not represent all Tribes. The NATHPO has been a consulting party on the development of the PA. The FS also expects that Tribes that attach cultural affiliation to a given Project area would be consulting parties on the development of a HIP under the PA.
<i>Request for more detail on how Tribal consultation was conducted during the 120-day consultation period for the outline in the Whereas</i>	The FS engaged Tribes for their input on an outline of the Phasing PA during a 120-day consultation period beginning in late 2019 and ending March 31 st , 2020. The government-to-government and Section 106 consultations primarily occurred at the Region or Forest-level. The Washington DC office joined several consultations that occurred over the phone throughout the 120-day tribal consultation. Plans for some in-person consultation meetings that were organized by the Regions during the last 30 days of the consultation period were disrupted by the pandemic. All comments that were received via email were also reviewed and helped shape the draft. The whereas clause will include generalized information about tribal consultation in the final PA.
<i>Whereas clause specific to public comment should be broken out separately from other parties</i>	Change incorporated.



HIP Development	
<i>The initiation letter to consult to develop the HIP should include a detailed timeline and have longer comment periods</i>	The PA now clarifies that the FS and consulting parties will establish a timeline for developing the HIP. At a minimum, consulting parties must hold consultation meetings for the HIP twice and have a 30-day final review period that is separate from other comment periods related to other planning processes.
<i>The final 30-day comment period for reviewing the HIP should begin when the SHPO receives the document rather than when it is sent. Additionally, how will it be sent?</i>	The 30-day period now begins upon receipt. Additionally, the type of correspondence is at the Forest unit's discretion, based on their current protocols.
<i>Consulting parties should be involved in HIP development</i>	The intent was always for FS to develop the HIP in consultation with consulting parties. Language now clarifies provisions of the HIP will be established in consultation.
<i>Consulting parties to the HIP should include more than SHPOs and Tribes</i>	The draft PA now clarifies that the FS will consult with other interested parties pursuant to 36 CFR 800.3(f).
<i>The PA needs to obligate Forests to allocate funds in their Project budgets to compensate Tribes for work to develop the HIP.</i>	The draft PA does not direct Forests to do so, as such decisions are at the discretion of the Agency Official and subject to the availability of annual congressional appropriations. As mentioned in the informational webinar, Forests should work with the Tribes and determine whether it is appropriate to fund Tribes for providing their expertise.
<i>The initial informational package must include a list of all consulting parties that are receiving the invitational letter.</i>	A list of all parties that have received the information has been incorporated as a requirement of the informational package (IV.B.iv)
<i>Recommend specifying how HIP consultation will occur including number of meetings, review drafts, etc.</i>	The draft PA now includes some minimum requirements for consultation on the HIP, while retaining the flexibility to be customized for a given Project and its consulting parties preferences.
<i>PA should not limit Tribal consult to solely resources of cultural and religious importance</i>	The range of what Tribes may consult on has been changed. The PA allows for Tribes to consult on any cultural resources.
<i>Tribes and SHPOs should be able to comment on level of identification effort in the HIP.</i>	If they choose to participate, Tribes and SHPOs will be HIP consulting parties and will have opportunities to comment on identification efforts throughout the development of the HIP.
<i>If the HIP's identification differs from State standards, per terms in</i>	Yes, the idea is for the HIP to be developed in consultation with the SHPO, Tribes, and other interested parties. SHPO, Tribes, and other interested parties make up the consulting parties that develop the



<i>the HIP, FS should consult with SHPO on any survey protocols that deviate from State standards</i>	HIP with the FS. This FS may choose to incorporate State survey standards in the HIP.
<i>The PA provides for public meetings under NEPA but does not provide for meetings with Tribe</i>	This confusion was unintended. The PA now clarifies that NEPA-related meetings alone will not satisfy consultation requirements under Section 106. Tribes will have the opportunity to consult in the development of the HIP or engage in government-to-government consultation.
<i>It seems that the HIP does not require agreement by the consulting Tribes or SHPOs. Suggestion to change the word “consider” to “consult” per the meaning in the regulations</i>	The PA now clarifies that the HIP development will be completed in a manner that seeks consensus. The FS has changed the word from “consider” to “consult.” The FS expects that Tribes, SHPOs, and other interested parties will be consulting parties in the development of the HIP.
<i>If the APE changes during the implementation of the HIP, SHPOs and Tribes should be consulted in the HIP’s amendment.</i>	The Agency Official now will notify HIP consulting parties if the APE has changed and whether an amendment to the HIP is necessary. Any amendment would be done in consultation with HIP consulting parties.
<i>Recommendation for process to amend and terminate the HIP to be done in consultation</i>	Language about allowing the Agency Official to make minor technical revisions to the HIP has been revised so that any amendment would be done in consultation with HIP consulting parties.

Clarification of the HIP Components

Eleven (11) SHPOs and five (5) Tribes commented on the HIP components.

Summary of Comment	Response
<i>The HIP template is incomplete</i>	The draft PA now has a more developed HIP template.
<i>What is the difference between a HIP and Heritage Management Plan or historic preservation treatment plan?</i>	A HIP outlines the details of how the FS will complete a phased approach to Section 106 for a specific Project. A Heritage Management Plan or Historic Preservation Treatment Plan is often developed as an independent endeavor, not always in response to an undertaking.
<i>Summary of proposed Project that is included in the initial/invitational package of information needs to be specific enough to determine if future Projects would be covered by the HIP</i>	This has been changed so the initial package of information regarding historic properties in the area will only be sent to consulting parties that express interest in developing the HIP. As the invitation letter should be sent as early as possible, the amount of information pertaining to the Project will vary. Regardless, the HIP will be developed for a Project and its activities. The HIP may be amended to add any activities not already in the HIP if such a need should arise.



<i>How does this PA interact with state-specific process (like state PAs or state Site Identification Strategies)?</i>	Consulting parties may incorporate aspects of any state-specific process into the HIP developed for a Project, but it would not change the terms of the nationwide PA. Likewise, the nationwide PA will not change the terms or supersede other state-specific PAs.
<i>What does the FS mean by confidentiality concerns?</i>	Confidentiality concerns may pertain to sensitive information about any resources that consulting parties express concern about FS making public or widely available, such as the locations of sites. Site locations were originally required in the initial consultation package but has since been removed. Any information about site locations will be shared once consulting parties agree to develop the HIP and with consideration to any confidentiality concerns expressed by HIP consulting parties.
<i>Suggestion to drop research questions from the initial consultation package to invite consulting parties to develop the HIP</i>	Research questions were deleted as it was too early in the process to include research questions. Additionally, this initial package of information is now sent to consulting parties that have expressed interest in developing the HIP.
<i>Unsure of what is meant by the statement "Consulting parties are encouraged to prioritize areas for targeted cultural resource field survey by taking into consideration the desired outcomes for historic properties," specifically what is meant by "desired outcomes"</i>	Language about "desired outcomes" has been removed. The original intent was for consulting parties to define their desired outcomes from the Section 106 process, primarily in the context of using Cultural Resource Stewardship Opportunities. In this current draft, the role of Cultural Resource Stewardship Opportunities has been clarified to be independent activities from the S.106 process. The PA still encourages consulting parties to identify any Cultural Resource Stewardship Opportunity to be incorporated into the Project design, allowing consulting parties an opportunity to provide input on the Project design that might result in desired historic preservation outcomes.
<i>Where do Stewardship Opportunities fall in the process? Is it mitigation?</i>	The PA draft now clarifies that Cultural Resource Stewardship Opportunities do not mitigate adverse effects, though mitigation actions may look similar to those Cultural Resource Stewardship Opportunities. Cultural Resource Stewardship Opportunities are separate actions that consulting parties identify during the HIP development process. The Agency Official may decide to incorporate Cultural Resource Opportunities into the Project design, to enhance enjoyment of and/or protection of any property in the Project area.
<i>During the HIP development stage, describing the APE as the NEPA analysis area is confusing and inappropriate.</i>	The draft PA now clarifies the APE will include all areas where historic properties may be directly and indirectly affected. The HIP may be larger than the Project footprint when there is potential for indirect effects such as visual effects.
<i>What happens if there is disagreement on the APE?</i>	The draft PA now clarifies that the ACHP may be invited to participate at any time to help resolve disputes.



Identification	
<i>Recommendation that identification and inventory may include more than just field surveys, so should add clarifying language</i>	Change has been incorporated.
<i>The HIP should require survey of APE</i>	A reasonable and good faith effort to identify historic properties is required by the regulations. Consulting parties will decide what constitutes a reasonable and good faith effort to identify historic properties based on local conditions. Consulting parties may decide field survey meets a reasonable and good faith effort to identify historic properties, while other consulting parties may agree that a probability model meets a reasonable and good faith effort to identify historic properties.
<i>Recommendation for ethnographic overviews to be included in cultural resources overviews</i>	Language changed to allow for ethnographic overviews.
<i>Can we use site identification strategies already developed?</i>	Yes, the FS encourages HIP consulting parties to incorporate effective methods that have already been established in the Project-specific HIP.
<i>Remote sensing may not be as practical or cost effective as pedestrian survey. Additionally, new or even existing technologies may be inappropriate depending on the type of resource, type of technology or concerns of Tribal Governments.</i>	Remote sensing can be a practical and cost-effective alternative to pedestrian survey. Regardless, such identification strategies would be developed in consultation with HIP consulting parties, according to their local experiences, concerns and conditions. The PA does not intend to prescribe an identification method for all forests.
<i>Identification efforts should be driven by likelihood of historic properties, not management priorities or resources “deemed of most interest”</i>	In response to multiple comments, the FS has clarified in the PA that that the level of identification effort should be informed by several variables, as outlined in the regulations, including: the nature and scale of the Project and its specific Project activities; where hazardous conditions or other barriers to identification may be located; level of federal involvement; where the highest potential for historic properties may be located; where the highest potential for adverse effects to resources may occur; and as otherwise negotiated among consulting parties.
<i>It is not clear whether this PA allows for survey or other identification under section 110 in an area that is different than the APE</i>	At a minimum, HIP consulting parties should discuss background information and research pertinent to the APE to identify historic properties within the APE. There is flexibility for consulting parties to mitigate any adverse effects with alternative mitigation actions such as identification under Section 110.



<u>Adverse Effect</u>	
The procedures to resolve adverse effects are too vague.	The draft has incorporated more details on how to resolve adverse effects without a Memorandum of Agreement (MOA). For example, before the undertaking occurs, the HIP consulting parties may already have established a set of standardized mitigation measures and timeline for implementing those mitigation measures for the undertaking. If there is an adverse effect and no standardized mitigation already established, consulting parties will consult to resolve such effects pursuant to the process they developed in the HIP. The mitigation action will be included in the HIP as an amendment.
<i>The introduction materials mentioned “creative mitigation,” but nothing is mentioned in the PA about this</i>	The draft now includes the term “alternative mitigation” as a way to resolve adverse effects.
<i>The PA ignores the core purpose of the NHPA and Section 106 of preserving not merely mitigating effects.</i>	The PA is designed to allow flexibility among HIP consulting parties on how to comply with Section 106. The HIP will outline how the agency will meet its Section 106 responsibilities under the NHPA to identify, assess, and resolve any adverse effects, if found.
<u>Finalizing the HIP/Dispute Resolution</u>	
<i>The finalized HIP should be part of NEPA documents</i>	The HIP will be included as an appendix or referenced in the applicable NEPA decision document.
<i>Regarding Agency Official signing and finalizing the HIP, the HIP must be reviewed and approved and signed by the SHPO and Tribes</i>	Under the terms of the PA, SHPOs and Tribes have a consulting role in the development of the HIP but do not have the same signatory role as they would if a MOA or PA were being developed locally under the standard Section 106 processes. The PA does not intend to require signatures from consulting parties as it runs counter to the purpose of the nationwide Phasing PA. While the HIP does not require signature from SHPO or Tribes to finalize, the FS must consult and seek consensus during the HIP development.
<i>Concern over how disputes in the formalization of the HIP will be resolved without third party participation, like the ACHP</i>	The FS changed HIP dispute resolution process to seek comment from ACHP on the issue. Additionally, the ACHP may choose to participate in the development of the HIP upon request of the FS or the HIP consulting parties (VI.C.4.a.).
<i>The Forest Agency Official, not the Regional Forester, should decide whether a HIP may be modified.</i>	The PA reflects this process, whereby the Agency Official will consult with the Regional Forester and Regional Heritage Program Lead to decide whether a HIP may be modified. The decision still lies with the Agency Official, who will likely be the Forest Supervisor or one of the Forest’s District Rangers.
<i>The HIP should have a dispute resolution clause that allows HIP consulting parties to resolve the</i>	The dispute resolution process regarding the HIP formalization process includes consultation with all HIP consulting parties. The FS will consult with the applicable SHPO if that SHPO has chosen to participate in HIP development. If HIP consulting parties raise disputes during the implementation of the HIP, the Agency Official



<i>disputes- not the signatories of the PA.</i>	will convene a meeting or teleconference to consider views of the HIP consulting parties, and where feasible, seek agreement regarding matters arising in the HIP.
<i>Agency Official's written response to the dispute should be shared with consulting parties.</i>	The PA now clarifies that the FS will keep records of how consultation was undertaken to develop the HIP and how each concern raised was addressed, as appropriate. Upon request from a consulting party, the Agency Official may make these records available to a consulting party and with consideration to confidentiality concerns.
Post-Review Discoveries and Inadvertent Discoveries	
<i>Not all human remains are Native American remains and State laws often apply; the PA should include a stipulation for State laws regarding human remains and funerary objects</i>	The draft now clarifies that if human remains are discovered at any time during the implementation of the Project, work will stop in the area of the discovery, and the agency shall follow the provisions of the Native American Graves Protection and Repatriation Act (25 USC 3001), as applicable, and state and local laws, as appropriate.
<i>Not all post-review discoveries are historic properties</i>	The HIP now allows consulting parties to negotiate how they will address post-review discoveries. Otherwise, the HIP consulting parties will follow 36 CFR 800.13.
<i>48 hours may not be enough time to respond to post-review discoveries and inadvertent discoveries</i>	The HIP now allows consulting parties to negotiate their timeline to respond to post-review discoveries. If consulting parties do not come up with another process, they will follow 36 CFR 800.13.
<i>The PA should include Tribal input and other consultation besides SHPO on post-review discoveries and inadvertent discoveries</i>	The HIP now allows consulting parties to negotiate their timeline to respond to post-review discoveries. If consulting parties do not come up with another process, they will follow 36 CFR 800.13

HIP Implementation: Timing, Monitoring, Reporting

Four (4) SHPOs and three (3) Tribes commented.

Summary of Comment	Response
<i>Concern that deferring work through phasing will result in that work being forgotten or just not being done.</i>	The FS Heritage Program is developing Phasing PA training with the ACHP, to include a project-management training component that speaks to tracking the implementation of the HIP activities. Additionally, the proposed annual reporting and updates on schedules intends to encourage a more robust management approach to these large-scale, multi-year Projects.
<i>Clarify that the HIP would be completed before commencing activities with the potential to impact historic properties</i>	The PA now clarifies that the Agency Official shall complete all identification and evaluation activities as well as measures to avoid, minimize, or mitigate adverse effects outlined in the HIP before a specific Project activity begins in an area of the Project where historic properties may be affected.



<i>Steps to implement the HIP need to be identified and included with specific timelines</i>	The PA does not include further details on timelines for HIP implementation, as appropriate timelines cannot be foreseen and included at this point. The HIP now requires for local FS units and consulting parties to discuss timelines for the Project and when each of the HIP activities will be implemented during the annual meeting.
<i>There needs to be a process whereby a FS unit that fails to comply with the terms of the HIP will be suspended from using the PA</i>	Any FS unit that fails to comply with the terms of a HIP that was developed in consultation with HIP consulting parties will not be in compliance with Section 106 and would therefore not be able to use the PA to cover their responsibilities under 106. The FS unit and consulting parties would need to follow the standard Section 106 under 36 CFR 800. Signatory parties have the option to begin the process to terminate the PA if they find that one or more FS units have not complied with the terms of the PA.
<i>The HIP needs to have an annual report.</i>	The draft PA clarifies every HIP requires an annual reporting mechanism.
<i>How will the HIP annual report be shared with consulting parties?</i>	The draft PA includes a process for sharing HIP annual reports with the HIP consulting parties and the applicable SHPO/THPO.
<i>The annual report for the HIP should have a due date after end of the year</i>	The draft PA now includes some minimum requirements for annually reporting on the HIP's activities. However, the contents and timing of the report can be customized according to consulting parties' preferences.
<i>There should be an avenue to provide feedback from HIP consulting parties including the applicable SHPO or THPO.</i>	Avenues to provide feedback can be incorporated into the annual reports or annual meetings in the HIP.
<i>The HIP annual report must list all undertakings</i>	The HIP now requires the annual report to include, at a minimum, a list of Project activities completed and initiated under the Project in the previous fiscal year, schedule updates for the next fiscal year and update on long-term schedule for the Project.

