



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Office of Environmental Policy and Compliance  
1849 C Street, NW – MS 2342-MIB  
Washington, D.C. 20240



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PEP/NRM

## ELECTRONIC MAIL MEMO

January 29, 2008

To: Assistant Secretary, Indian Affairs\*  
Director, Fish and Wildlife Service  
Director, Geological Survey  
Director, Minerals Management Service  
Director, National Park Service  
Director, Bureau of Land Management  
Director, Bureau of Surface Mining  
Commissioner, Bureau of Reclamation  
Director, Office of Insular Affairs

From: Team Leader, Natural Resources Management  
Office of Environmental Policy and Compliance {Lead}

Subject: Review of NEPA and NHPA Handbook: Coordinating the National  
Environmental Policy Act (NEPA) with Other Federal Environmental Laws  
(**ER 08/91**) (Agency due date: **March 14, 2008**)

The Council on Environmental Quality (CEQ) has provided the Department a copy of NEPA and NHPA Handbook: Coordinating the National Environmental Policy Act (NEPA) with other Federal Environmental Laws (**Document attached to this memo**).

Would you please have your appropriate field-level office review the guidance from its particular jurisdiction or special expertise. **Forward your comment (including a “no comment”) to this Office no later than March 5, 2008.**

This Office will prepare the Department’s comments for signature by the Director, OEPC, by **March 11, 2008**. Please supply all signed paper comments, comments on disk or by electronic mail to this Office.

/s/1/29/08  
Vijai N. Rai

Enclosure

cc: Assistant Secretaries  
REOs/All  
OEPC-Staff Contact: Shawn Alam, 202-208-5465; [shawn\\_alam@ios.doi.gov](mailto:shawn_alam@ios.doi.gov)  
\*Hard copy distributed by regular mail.

# **Coordinating the National Environmental Policy Act With Other Federal Environmental Laws**

Prepared by:  
The Harmonizing Workgroup

XXX, 2008

### *Disclaimer*

This Handbook provides guidance on ways to achieve efficiencies by integrating NEPA with other federal environmental statutes. It does not supersede existing CEQ or federal agency NEPA or other regulations, and the characterizations of law and regulation it contains should not be treated as definitive. Federal agencies should refer to these original sources as part of sound environmental planning practice. The sole purpose of this Handbook is to provide guidance for federal agencies to consider in complying with NEPA; shall not be construed to create a cause of action.

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## **Introduction**

In 2002, the Council on Environmental Quality (CEQ) convened a NEPA Task Force to examine current NEPA implementation practices and procedures and to identify opportunities for improvement and modernization in six specific areas. The resultant report, Modernizing NEPA Implementation, published in September 2003, discussed the task force findings and recommendations in the six specified areas. In addition, a number of issues were raised in public comment and during interviews on the procedural aspects of the NEPA process. Specifically, the task force found further opportunity for integration of requirements, and recommended that CEQ:

*In consultation with the Environmental Protection Agency, Advisory Council on Historic Preservation, Fish and Wildlife Service, the National Oceanic and Atmospheric Administration's National Marine Fisheries Service and other agencies, as appropriate, develop a handbook to effectively integrate the NEPA process with Endangered Species Act Section 7 consultation, National Historic Preservation Act Section 106 coordination, Clean Air Act conformity requirements, and Clean Water Act total maximum daily load and Section 404 requirements.*

### **Handbook Overview and Purpose**

Federal environmental and resource conservation statutes and executive orders applicable to federal agency actions span a variety of scientific, economic and social issues and often mandate conservation and pollution prevention measures to protect the environment and human health. A coordinated compliance with these statutes, implementing regulations and executive orders can be complicated because of overlapping substantive and procedural requirements. The National Environmental Policy Act (NEPA) of 1969 [42 U.S.C. § 4321 *et seq.*] can provide an excellent coordination vehicle because NEPA requires environmental impact assessment for agency actions that implicate these substantive requirements. This handbook is a tool for using NEPA as such a coordination vehicle.

NEPA mandates in section 102 (A) [42 U.S.C. § 4332(A)] that:

[T]o the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all agencies of the Federal Government shall-

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design

arts in planning and in decision making which may have an impact on man's environment;

The CEQ implementing regulations mandate the following in achieving this statutory objective:

To the fullest extent possible, agencies will prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders. [40 C.F.R. § 1502.25(a)]

This policy also applies to environmental assessments.

NEPA establishes procedures to “insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.” [40 C.F.R. § 1500.1(b)] The purpose of these procedures is to foster informed decisions. Coordinating NEPA procedures with those of other federal environmental statutes and executive orders facilitates NEPA objectives by promoting efficiencies in environmental planning and development of “high quality information” on which to base agency decisions. [40 C.F.R. § 1500.1(b)] Accordingly, CEQ in implementing regulations directs federal agencies to:

Implement procedures to make the NEPA process more useful to decision makers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. [40 C.F.R. § 1500.2(b)]

To achieve this objective, federal agencies are further directed to:

[I]ntegrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays in the process, and to head off potential conflicts. [40 CFR §1501.2]

This process integration includes ensuring NEPA planning and review processes “run concurrently rather than consecutively” with other processes required by law or agency practice. [40 C.F.R. § 1500.2 (c)]

### **The Scope of the Handbook**

The first four chapters address the following environmental resources, one or more of which is likely to be an issue that needs to be addressed in all NEPA evaluations. Moreover, these resources were the focus of the Task Force's recommendation:

- Air Quality – particularly SIP conformity;
- Endangered Species;
- Historic Properties; and
- Wetlands.

The subsequent chapters discuss a number of other environmental resources that may be issues to be addressed in NEPA evaluations. Specifically, the chapters address:

- Agricultural Lands;
- Coastal Zones;
- Essential Fish Habitat;
- Floodplains;
- Marine Mammals;
- Migratory birds;
- Impaired Waters (and Total Maximum Daily Loads);
- Sole Source Aquifers; and
- Wild and Scenic Rivers.

In general, each chapter includes the following discussions:

1. Overview: an overview of the compliance requirements of the respective laws as well as any implementing regulations/policies/guidance. Where appropriate, statute-specific provisions for combining compliance requirements with the NEPA process are discussed. In addition, discussion of compliance in the context of a larger project approval process is also addressed.
2. Definitions: where appropriate, a comparison of NEPA and other statutory or regulatory definitions on a related environmental topic is provided.
3. Commonalities/Potential areas of conflict: a discussion about the commonalities or potential areas of conflict among respective process requirements that inhibit or promote parallel processing with NEPA.
4. Process recommendation: a recommended process to satisfy both the NEPA and the related statute's procedural requirements is provided.

A specific attempt was made to outline concurrent timing between NEPA and the respective statutes, as recommended by the NEPA Task Force.

The handbook was designed to address the resource areas that most federal agencies would address most frequently in their NEPA analyses. Not every federal environmental law is addressed, nor have state statutes that apply to federal agencies where a state has been delegated authority to implement a federal program, or where there has otherwise been a waiver of federal sovereign immunity, been addressed. The variance in such state requirements makes addressing them here impractical

The procedures outlined in the chapters should be considered suggested best management practices that, if followed, will assist the lead agencies in complying with the statutes that are addressed and provide for a more effective and efficient use of the NEPA process.

## **Historic Properties**

### **Program Summary**

Under Section 106 of the National Historic Preservation Act<sup>1</sup> (NHPA), Federal agencies must take into account the effect of their undertakings on historic properties and provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment with regard to such undertakings. The Section 106 implementing regulations, “Protection of Historic Properties,” 36 CFR Part 800, describe a Section 106 review process, which “seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation.”<sup>2</sup> The process provides for [whether it’s effective or not depends on how implemented rather than the process per se] participation of State and local governments, Indian tribes, representatives from various businesses and organizations, and private citizens in Federal project planning that may affect historic properties. Through its administration of Section 106, the ACHP helps parties reach agreement on measures to avoid, minimize, and mitigate adverse effects on historic properties and to resolve potential conflicts that may arise between project goals and preservation objectives.

The Section 106 regulations encourage agencies to coordinate their Section 106 process with their NEPA process. Through coordination, information and analyses-sharing, as well as compliance can be completed in a streamlined fashion that minimizes the duplication of effort. This coordination also ensures historic properties receive adequate and timely consideration at the beginning of and throughout the planning process.

The purpose of this chapter is to provide experienced NEPA practitioners some key concepts and strategies for harmonizing Section 106 and NEPA. Since the ACHP has not yet published guidance to interpret 36 CFR §800.8, Coordination With the National Environmental Policy Act, the intent of this chapter is to identify opportunities for harmonizing the Section 106 process with NEPA and to move forward with new and innovative environmental coordination strategies. Acknowledging the slight distinctions between the purposes of Section 106 and NEPA provides a foundation from which a discussion of coordination can begin. For instance, where NEPA calls for public disclosure and focuses on alternatives, Section 106 requires a consultative process and focuses on resolving adverse effects to historic properties. NEPA has a closed timeframe in which the process operates, and Section 106 allows for certain open-ended consultation periods. Further details on the requirements of Section 106 and NEPA are available from the ACHP and the CEQ, respectively. The goal here is to help navigate the reader through these distinctions and to create a better understanding of the benefits and challenges of coordinated compliance.

### **Two approaches for harmonizing Section 106 and NEPA**

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<sup>1</sup> 16 U.S.C. § 470 et seq.

<sup>2</sup> 36 CFR § 800.1(a)

As stated earlier, the ACHP's regulations, which implement Section 106, encourage Federal agencies to coordinate Section 106 reviews with NEPA reviews. One approach for coordination will be referred to as the "parallel approach" for purposes of this chapter. A second, different approach that may be used for complying with Section 106 and NEPA as provided for in 36 CFR §800.8(c), will be referred to as the "integrated approach." Regardless of which approach is used, the Federal agency should always coordinate or "harmonize" its Section 106 and NEPA processes.

***Parallel approach.*** The ACHP encourages all agencies to conduct their Section 106 compliance on a parallel track with their NEPA process, thus allowing for the coordinated timing of public participation, review, and decision points. Consideration of historic properties and Section 106 responsibilities should begin as early as possible in the NEPA process, during scoping and preliminary planning. Information should flow freely between the consulting parties identified through the Section 106 review process to the agency and its planning team and vice versa. Federal agencies may convene consultation meetings separately from other environmental coordination meetings and may or can develop independent documents to detail and support their findings and determinations regarding historic properties. The documentation developed and any outcomes reached during the Federal agencies' compliance with the four-step (36 CFR §§800.3—800.6) Section 106 review process can be incorporated into their NEPA documents and decisions, depending on project scheduling.

***Integrated approach.*** The Section 106 regulations also provide for a specific process, detailed at 36 CFR §800.8(c), whereby the NEPA process may be used to fulfill an agency's Section 106 responsibilities, provided that certain standards and documentation requirements are met. This approach encourages the full integration of Section 106 consultation and the coordination of environmental reviews. The benefit to stakeholders and the public of this integration is data sharing, cost and time savings, and an ability to present the big picture of a proposed action during preliminary planning and design development. It should be noted that although the ACHP regulations allow program alternatives under Subpart C, 36 CFR §800.14, the NEPA coordination provision at 36 CFR §800.8(c) is not intended to act as a program alternative to the Section 106 process, but is intended to be applied on a project by project basis as appropriate.

### **Choosing the right approach for Section 106-NEPA compliance**

The consideration of a number of factors will help identify the more appropriate approach – parallel or integrated – for a specific action/undertaking. The Federal agency official may wish to consider the following in deciding how it should proceed to comply with Section 106 and NEPA as this discussion will help identify the challenges and opportunities that are to the benefit, not only of the agency decision-makers, but also to the public.

- *What type of environmental document will be prepared under NEPA?* If the Federal agency determines that it is appropriate to prepare either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA),

then the integrated approach is available.<sup>3</sup> It should be noted, however, that if the proposed action is categorically excluded from NEPA review, the Federal agency must still determine whether that action constitutes an “undertaking requiring review under [S]ection 106 pursuant to §800.3(a),”<sup>4</sup> and, if so, follow the typical Section 106 process per 36 CFR §§ 800.3 through 800.6.

- *What historic properties are present within the area of potential effect?* Depending on the type, location, and/or significance of the historic properties present in the area of potential effect for the proposed action, the Federal agency may be required to conduct more detailed surveys, inventories, and/or consultation. For example, if there is a National Historic Landmark present, the agency will be required to notify the Secretary of Interior and, if there may be an adverse effect to such a property, invite them to participate in the consultation. Arranging and providing time for this additional consultation component will need to be factored into the overall review period. If the historic properties present in the APE require this level of attention, then the parallel approach may be preferable.
- *What is the range of alternatives to be considered in the draft environmental document?* The integrated approach requires that the draft environmental document “identify historic properties and the assessment of the effects of the undertaking on such properties in a manner consistent with the standards and criteria of §§800.4 through 800.5.”<sup>5</sup> If several alternatives in distinct locations are to be evaluated, or a large geographic area is defined as the project area, it may not be cost efficient or timely to conduct a detailed identification and assessment of effects for all alternatives. A high potential for the presence of buried resources that will only be identified later in the project development process may preclude implementing the integrated process. In such instances, many Federal agencies would find it more expedient to apply the parallel approach during the evaluation of multiple alternatives while preparing the draft environmental document. The parallel approach allows for the phased identification and evaluation of historic properties where the alternatives being considered include large corridors or other large land areas, or where access to the property may be restricted<sup>6</sup>. The integrated approach permits phasing as well, however, such phasing must address historic properties in a manner commensurate with the assessment of other environmental factors.
- *Who are the consulting parties and what is the level of public interest?* The integrated approach requires the same process for identifying and involving

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3 36 CFR §800.8(c)

4 36 CFR §800.8(b)

5 36 CFR §800.8(c)(1)(ii)

additional consulting parties and the public as is suggested for the parallel approach. However, the overall consultation can be difficult to fully integrate with other environmental coordination when the proposed action or the environmental issues are complex, or when there are a large number of active consulting parties. In such cases, the parallel approach may be more appropriate.

- *Can substantive treatments to avoid, minimize, or mitigate adverse effects on historic properties be presented in the environmental document?* The integrated approach requires that if, during the NEPA review, the Federal agency determines that the proposed action may cause adverse effects to historic properties, within the integrated approach, the agency must include proposed mitigation measures, developed through consultation with identified consulting parties that avoid, minimize, or mitigate those potential adverse effects in the environmental assessment or draft environmental impact statement. The agency's Section 106 responsibilities will not be satisfied unless a "binding commitment" is made by the agency through the implementation of those measures in the ROD, FONSI, MOA (or PA), or ACHP comment under §800.7.<sup>6</sup> If the agency feels that it cannot provide such proposed Section 106 mitigation measures in the environmental assessment or draft environmental impact statement, then the parallel approach may be more appropriate.

### **Documenting the selected approach to Section 106-NEPA compliance**

If the Federal agency elects to use the parallel approach, then only the notification as stipulated in 36 CFR §§800.3—800.6 is necessary.

If, however, the Federal agency selects to use the integrated approach for an undertaking or class of undertakings, then the agency must provide advance notification of its intent to the State/Tribal Historic Preservation Office (SHPO/THPO) and the ACHP.<sup>7</sup> In addition, the Federal agency must ensure that the documentation standards, described in §800.8(c)(1) are met and that the process, defined in §§800.8(c)(2) through (5), is followed.

### **Applying the Parallel Approach**

Agencies are encouraged to begin Section 106 consultations as early as possible in project planning. The four-step Section 106 review process is defined in §§800.3 through 800.6.

#### Timing and documentation

It is recommended that the results of 1) the initiation of Section 106; 2) the identification and evaluation of historic properties; 3) the assessment of effects; and, where possible, 4)

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<sup>6</sup> 36 CFR §§800.8(c)(4)(i)-(ii)

<sup>7</sup> 36 CFR §800.8(c)

the proposed method of resolving adverse effects should be included in the draft environmental document, if it is to be circulated to the public. The results should be summarized, and care should be given to ensure the confidentiality of location information for archeological sites in general and particularly sites to which Indian tribes or Native Hawaiian organizations attribute religious or cultural significance.<sup>8</sup> The Section 106 finding for the undertaking (e.g., an undertaking with no potential to cause effects to affect historic properties; no historic properties affected; no adverse effects; or adverse effects) should be clearly stated, if available, to allow the public an opportunity to comment on any finding.

If available, the method of resolving adverse effects should be incorporated into the discussion of the preferred alternative in the final environmental document. If a MOA or PA has been prepared to resolve adverse effects, then a draft or executed copy may be appended to the final environmental document. If a draft copy is appended, ensure that all parties involved in implementation have agreed in principle to the stipulations in the MOA or PA.

Ideally, execution of the MOA or PA prior to issuance of the FONSI or ROD will evidence for the broader public benefit the outcome of the Section 106 consultation process.

#### Public involvement

If a public meeting or hearing is held, it is suggested that a specific portion of the meeting should be dedicated to Section 106 review, and included as an agenda item. The public can assist in the identification of potential historic properties, the consideration of their significance, and the assessment of effects on those properties. The SHPO/THPO and other consulting parties are critical to the identification of historic preservation issues of concern or importance to the public. However, collaboration with these particular consulting parties does not substitute for public involvement or public comments.

The parallel approach assumes that consultation will occur as proscribed by 36 §§CFR 800.3-800.6. The ACHP's regulations define consultation as "the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process."<sup>9</sup> Whether the agency is following the parallel approach or the integrated approach, its responsibility for government-to-government consultation with Indian tribes does not change.<sup>10</sup>

Some actions/undertakings may include several public workshops, open houses, or meetings during the NEPA process. A Section 106 review update at any of these public venues can be considered to encourage public comment on historic preservation issues.

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8 16 U.S.C. 470w-3, 36 CFR §800.6(a)(5) and §800.11(c)

9 36 CFR §800.16(f)

10 36 CFR §800.2(c)(2)(ii)(B)-(C)

If the proposed action is categorically excluded, it may not require public involvement under NEPA. However, Section 106 requirements for the proposed action, including those regarding consultation and public involvement, would still apply.

### **Applying the Integrated Approach**

#### Identify consulting parties (NEPA Scoping and Preliminary Planning, Development of Proposed Action, Purpose and Need)

As stated above, the agency must provide advance notification to the State/Tribal Historic Preservation Office (SHPO/THPO) and the ACHP that it intends to use this approach. The regulations then specify that additional consulting parties should be identified pursuant to 36 CFR §800.3(f) or through the NEPA scoping and preliminary planning process with results consistent with §800.3(f).<sup>11</sup> The lead Federal agency should consider inviting the parties with consulting roles, including the Cooperating agencies and other stakeholders, into the scoping and preliminary planning process.

#### Alternatives, Identification of Affected Environment, Analysis of Environmental Identify historic properties and assess effects (NEPA Identification of Proposed Consequences)

As early as possible in the NEPA process, it is important to identify and evaluate historic properties pursuant to the standards provided for in the Section 106 process. This step should focus on identification of the area of potential effect and historic properties that are eligible or listed on the National Register of Historic Places. To that end, the agency should outline the survey requirements for the project area reflecting the action's Purpose and Need. This analysis should not be done in a vacuum, but rather, done in consultation with the SHPO/THPO, interested tribes, and other consulting parties. Circulation of the draft NEPA documentation can allow the greater public to participate and comment on this identification process. It should also be noted that the identification and evaluation outcomes at the Scoping stage are fluid, and may change as a result of new information as the process moves forward. The goal of this analysis is to establish the starting framework for future assessment and determinations.

#### Consultation (NEPA Scoping and Preliminary Planning through the process leading to ROD/FONSI)

As defined earlier, consultation is the process of seeking, discussing, and considering the views of other participants. Depending on the situation and the participants, consultation can be face-to-face, through correspondence, via telephone calls, with the exchange of e-mails. All parties can meet together at one time, or a Federal agency may choose to meet with parties separately or in groups. It is important to note again, however, that Federal agencies' responsibility to consult with Indian tribes is based on their government-to-

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<sup>11</sup> 36 CFR §800.8(c)(1)(i)

government relationship.<sup>12</sup>

The integrated approach does not require separate reviews of documentation by the SHPO/THPO and other consulting parties outside the NEPA process for determinations regarding the presence/absence of historic properties or the potential for adverse effects. However, though not required by 36 CFR Part 800, it is recommended that parties consult prior to the circulation of the draft environmental document is strongly recommended in order to ensure that the draft environmental document meets the standards of §800.8(c)(1) and that the substantive resolution of adverse effects presented in the document is adequate (see timing and documentation, below).

Involve the public (NEPA Scoping and Preliminary Planning, Review of Draft EIS/EA, Response to Comments, Final EIS/EA, ROD/FONSI)

The public is involved in the integrated approach similar to its involvement in the parallel approach (described above). This effort would be consistent with the agency's NEPA procedures and may vary depending upon the nature and scale of the undertaking.<sup>13</sup>

Develop measures to avoid, minimize and mitigate adverse effects (NEPA Development of Alternatives, Analysis of Environmental Consequences, Mitigation, Draft EIS/EA, Response to Comments, Final EIS/EA, ROD/FONSI)

The Federal agency must consult with the SHPO/THPO and other consulting parties to develop measures to avoid, minimize, or mitigate any adverse effects to historic properties from the undertaking. These measures should be described in detail in the NEPA document to facilitate reviews by all consulting parties and the public. It is not unusual for comments provided during this part of the process to form the basis for developing the ROD, FONSI, MOA, or PA, or ACHP Comment that formalizes the mitigation or treatment plan.

#### Timing and documentation

In the integrated approach, the official documentation of the Section 106 review process consists of the draft and final environmental documents, the ROD/FONSI, and/or MOA or PA, or ACHP Comment, where applicable. The environmental document must meet the standards of 36 CFR §800.8(c)(1). Prior to or concurrent with public availability of the draft environmental document, the Federal agency would provide the draft to the SHPO/THPO and consulting parties for review and comment. If the document is a draft EIS, it would also be provided to the ACHP. Prior to the close of the public comment period for the draft environmental document, the SHPO/THPO, consulting parties, and/or ACHP may notify the Federal agency that they have objections to the documentation. There are two bases for such objections: 1) the documentation does not meet the standards of 36 CFR §800.8(c)(1); or 2) the substantive resolution of the adverse effects

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<sup>12</sup> 36 CFR §800.2(c)(2)(ii)

<sup>13</sup> 36 CFR §800.8(c)(1)(iv)

on historic properties proposed by the Federal agency is inadequate. If the agency receives an objection, the matter must be referred to the ACHP.<sup>14</sup>

The regulations detail the process to resolve such objections, which includes an ACHP opinion. In order to avoid delays in the NEPA process, a comprehensive summary of the consultative efforts should be developed to minimize the likelihood of objections related to historic preservation.

Any measures agreed upon to avoid, minimize, or mitigate adverse effects must be incorporated as a binding commitment in the ROD, FONSI, MOA, or PA drafted pursuant to §800.6(c).

It is very important to note that if the integrated approach is followed, where an undertaking is modified or changed after the FONSI/ROD is approved, or, where the binding commitments made in the NEPA document to avoid, minimize, or mitigate adverse effects to historic properties are not followed, the agency must notify the ACHP and all other consulting parties that supplemental documentation will be completed or that the agency will follow the Section 106 procedures set forth in 36 CFR §§800.3 through 800.6.

### **Key Concepts**

Care should be taken when selecting either the parallel or integrated approach to coordinate compliance with Section 106 and NEPA. For some proposed actions, the typical Section 106 review process conducted in parallel coordination with NEPA will be the most appropriate path. For other proposed actions, an integrated approach pursuant to 36 CFR §800.8 may be more appropriate.

The following ten key concepts should be considered when a Federal agency is determining how to best harmonize NEPA and Section 106:

1. Decide early in the project planning process which approach is most compatible with the proposed action.
2. Note that the issues explored under NEPA and Section 106 will be similar and may utilize the same information-gathering sources.
3. Review existing Section 106 compliance and NEPA documents for the project area to determine whether previous reviews can be useful in completing the NEPA process for the proposed action.
4. Remember to first notify the SHPO/THPO and ACHP of the agency's intent to use the integrated approach per §800.8(c). Providing documentation explaining the basis for the agency's decision with such notification would assist the

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<sup>14</sup> 36 CFR §800.8(c)(2)

SHPO/THPO and the ACHP in identifying how they can best assist the agency in meeting its compliance goals.

5. Do not confuse solicitation of public comments with Section 106 consultation. Consider whether the NEPA review process allows adequate time for meaningful consultation.
6. Recognize the Federal agency’s responsibility for government-to-government consultation with Indian tribes regardless of which approach is used. Consider how the NEPA review process can adequately address issues of confidentiality.
7. Consider whether the analysis of alternatives under NEPA will benefit from the detailed consideration of historic properties and preservation concerns if Section 106 analysis is integrated into the planning process.
8. Consider whether the Section 106 process should be a discrete process for purposes of compliance with other federal and state requirements or for timing of resource identification.
9. When other non-federal entities are involved in the proposed action, consider whether the agency can adequately enforce compliance with the avoidance, minimization, or mitigation measures prescribed in the NEPA document for resolving adverse effects on historic properties.
10. Consider whether the NEPA review process can assist in or be used for addressing potential impacts to historic properties resulting from other related federal actions included in the proposed action. *Further information*

**Terminology Distinctions**

<u>NEPA</u>	<u>Section 106</u>
	Notify SHPO/THPO and ACHP that agency will use NEPA process for 106 compliance.
Identify project objectives and scope	Establish “undertaking” <ul style="list-style-type: none"> <li>• Identify appropriate SHPO/THPO</li> <li>• Plan to involve the public</li> <li>• Identify other consulting parties</li> </ul>
	<u>Finding:</u> <ul style="list-style-type: none"> <li>• No undertaking/no potential to cause effects,</li> <li>• Undertaking is type that might affect historic properties, or</li> </ul>

	<ul style="list-style-type: none"> <li>Project is covered by an existing Programmatic Agreement (PA)</li> </ul>
Identify social, economic, and environmental constraints	<p>Through consultation:</p> <ul style="list-style-type: none"> <li>Determine scope of identification efforts</li> <li>Identify historic properties</li> <li>Evaluate historic significance</li> <li>Resolve eligibility disputes</li> </ul>
	<p><u>Finding:</u></p> <ul style="list-style-type: none"> <li>No historic properties affected or</li> <li>Historic properties affected</li> </ul> <p>Time will be needed to resolve disputes/objections.</p>
Develop preliminary alternatives	Should be done early in the process, in consultation with SHPO/THPO and other consulting parties.
Analyze the impacts of the alternatives	Through consultation, assess adverse effects by applying Criteria of Adverse Effect.
	<p><u>Finding:</u></p> <ul style="list-style-type: none"> <li>No adverse effects; or</li> <li>Adverse effects</li> </ul> <p>Time will be needed to resolve disputes/objections.</p>
Incorporate alternatives analysis in the NEPA document, including no-practicable alternative determination, and circulate document for comment	Through consultation, consider comments and negotiate mitigation measures.
Incorporate comments into the selection of a preferred alternative	<p>Resolve adverse effects through additional consultation and pursue:</p> <ul style="list-style-type: none"> <li>MOA,</li> <li>PA, or</li> <li>Other program alternative</li> </ul> <p>Time will be needed to resolve disputes/objections.</p>
	<p>Should the parties decide that consultation is no longer productive, termination requires:</p> <ul style="list-style-type: none"> <li>Notification,</li> <li>Council comment, and</li> </ul>

	<ul style="list-style-type: none"> <li>• Agency response to Council comment</li> </ul>
Issue FONSI/ROD and continue with development	File MOA, PA, or final decision with SHPO/THPO, ACHP, and consulting parties. Include copy of it in FONSI/ROD.
Complete design	
Acquire necessary permits	
Receive final authorization to proceed to construction	Approve the undertaking.
	<p>If project is later modified...</p> <ul style="list-style-type: none"> <li>• Notify the Council and consulting parties that 106 reevaluation will commence, or</li> <li>• Follow 800.3 through 800.6</li> </ul>
	<p>If post-review discoveries occur...</p> <ul style="list-style-type: none"> <li>• Follow stipulations in MOA or PA, or</li> <li>• Consult per 800.13(b)</li> </ul>
Commence project and implement appropriate mitigation measures	Implement mitigation in MOA, PA or final decision.