



# Co-Decision Making and NHPA Section 106 Consultation with American Indian Tribes: Best Practices

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**Ellen P. Kennedy**

Anthropologist//Research Scientist



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## Overview

- American Indian Tribal Nations have a unique and important legal and cultural status as sovereign nations that requires additional engagement outside a typical stakeholder engagement process. Building such respectful relationships is essential for meaningful participation in federal decision-making processes.
- In acknowledgement of this unique status and in honor of the US Government's trust responsibility to Federally-recognized American Indian Tribes, the NHPA Section 106 review and consultation process is one of several federal regulations that require US federal agencies consult with Federally-recognized American Indian Tribes in a government-to-government manner.
- The NHPA Section 106 tribal consultation process can result in a participatory decision-making process that fosters co-decision-making, when best practices are employed. Employing similar principles can also be adapted for working with other stakeholder groups to enhance equitable participation and decision-making.
- This case study describes best practices employed within the context of an NHPA Section 106 assessment of the impacts of a groundwater remediation project on important cultural resources.



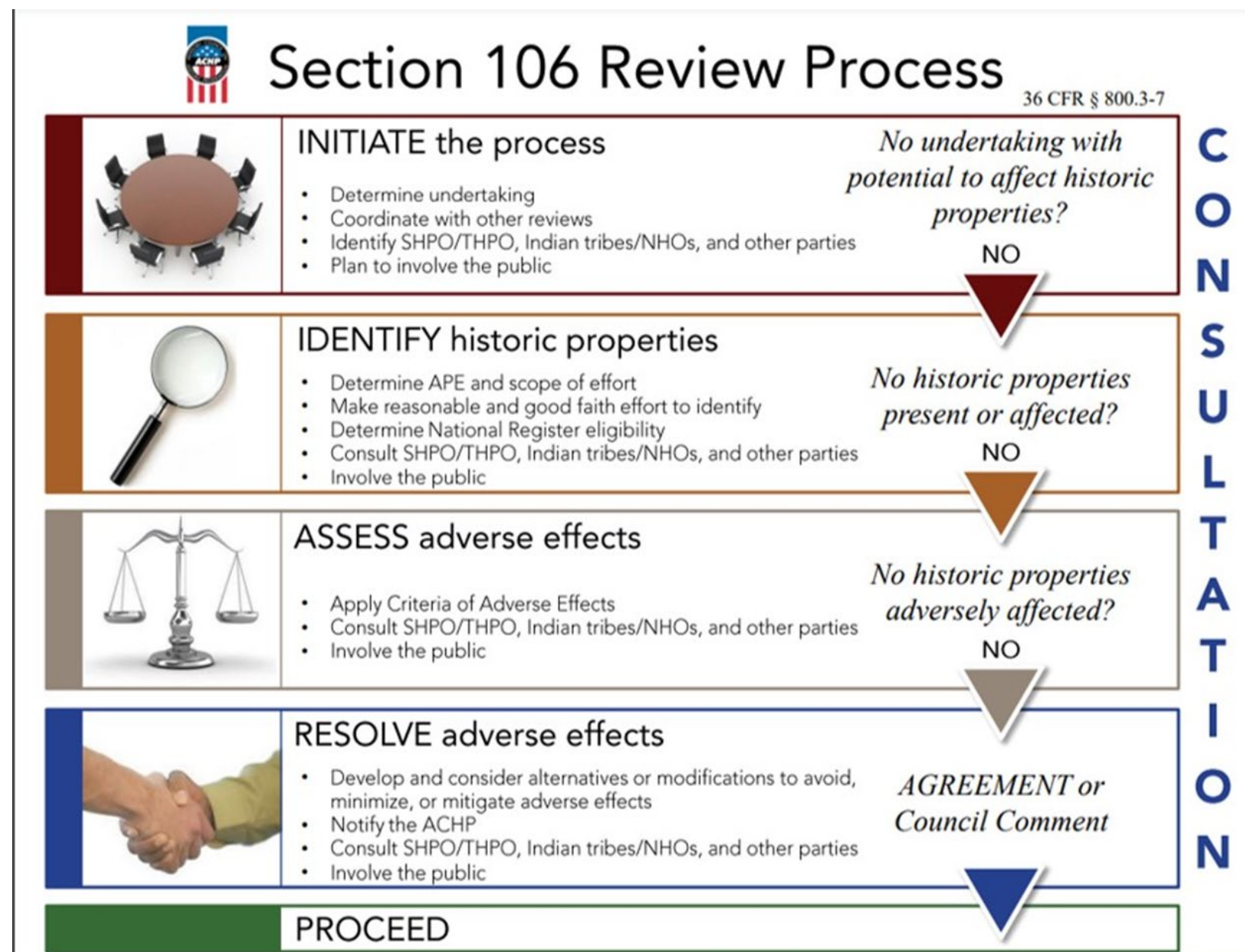


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# NHPA Section 106 Review and Consultation

- Consider the effects of their actions on “historic properties”.
- Conduct early and frequent consultation with Federally-recognized American Indian Tribes that attach religious and cultural significance to historic properties that may be affected by a proposed action prior to proceeding with an action.
- Undertake consultation with State Historic Preservation Offices, Tribal Historic Preservation Offices, and other consulting parties including interested members of the public.



NHPA Section 106 Review and Consultation Process, 36 CFR 800.  
Source: Advisory Council on Historic Preservation. [www.achp.gov](http://www.achp.gov)



# NHPA Section 106 Tribal Consultation- Best Practices for Participatory Engagement

NHPA Section 106 Tribal Consultation -- Best Practices for Engagement		
✓ Respect tribal sovereignty and recognize the need for government-to-government consultation	✓ Develop solid working relationships at leadership and staff levels	✓ Provide transparent and inclusive information sharing
✓ Proactively involve in decision-making process. Establish contact and communication pre-project and pre-NHPA	✓ Maintain frequent and regular communication	✓ Assure input is meaningfully incorporated into decision-making
✓ Hold face-to-face meetings with Tribe at locations that are convenient for Tribes	✓ Include tribal members in the conduct of field studies, identification of cultural resources, evaluation of significance, and development of mitigations.	✓ Provide compensation for tribal participation
✓ Use a tribal liaison and dedicated agency staff	✓ Develop effective tribal consultation policy	✓ Develop agreement documents between the agency and Tribes that outline expectations for communication and consultation throughout the project (i.e., Memoranda of Understanding).
Source: (GAO, 2019; Luhman & Klein, 2020; Rowe et al., 2018; Rowe and Finley, 2021; ACHP, 2012, 2015, 2017a, 2017b, 2019a; NATHPO, 2005).		

# Case Study: Proposed Groundwater Remediation Expansion Project

- Project took place at a large federal facility.
- Lands managed by a federal agency responsible for environmental remediation.
- Federal agency has an established working relationship with several American Indian Tribes with ancestral, historic, geographic and cultural ties to the lands.
  - Tribes receive funding to participate in environmental remediation decision-making and development of programs.
  - Federal agency has developed NHPA Section 106 tribal consultation and communication practices.
- Federal agency cultural resources liaison sends early notification via e-mail to initiate NHPA Section 106
- Monthly face-to-face meetings are held at Tribal offices and federal offices providing an opportunity for early communication about upcoming projects and identification of initial concerns and feedback.



## Case Study: Co-decision-making for a Proposed Groundwater Remediation Expansion Project

- Identification of preliminary concerns indicated a need to discuss in a face-to-face manner.
- Face-to-face meeting held. Resulted in identification of specific cultural resource concerns and identified need for a field visit to project area.
- Field observations confirmed the presence of archaeological surface material and established overall cultural sensitivity of the setting and viewshed surrounding the project area.
- Real-time expression of tribal cultural resource concerns enabled project team to work with tribal cultural resources staff to choose new and more acceptable locations for well placements and avoid direct impacts to significant cultural resources.
- Project design altered to avoid impacts to the viewshed and cultural setting. Resulted in use of flush-mount well cap instead of above-ground tube caps.
- On-site cultural resources monitoring is recommended further reducing potential impacts to subsurface archaeological material from well-drilling activities.