

6.1.10 SOP No. 10: Native American Consultation

The following SOP is based on NHPA Section 106 implementing regulations, 36 CFR Part 800 in effect at the time of this ICRMP. NPR 8510.1 requires an SOP for consulting with Native Americans, and this SOP outlines the process.

Applicable Laws/Regulations

- National Historic Preservation Act
- 36 CFR Part 800
- Native American Graves Protection and Repatriation Act
- American Indian Religious Freedom Act
- NASA Procedural Requirement 8510.1

Policy

- The HPO in the Facilities Engineering Division is designated as the Point of Contact for the Section 106 process, including those projects proposed by organizations that are subject to the Section 106 process.
- EMD, as delegated by HPO, coordinates with external regulatory agencies that regulate environmental and cultural resource programs in regard to Tribal properties and resources, and to archaeological resources (e.g., sites, artifacts, features, or other archaeological indications of past human activities).
- Project managers are required to coordinate internally with EMD before they begin work on any projects or undertakings.
- All consultation required under Section 106 and NAGPRA must be completed prior to beginning the project.
- Historic properties include districts, buildings, sites, structures, or objects and landscapes that are listed in, or are eligible for listing in, the NRHP. Historic properties may also include TCPs or Native American sacred sites. A property that is eligible for listing in the NRHP receives all the regulatory protection of a property that is listed in the NRHP.

Procedure

The following SOP is based on the standard Section 106 procedure outlined in 36 CFR Part 800 (see SOP No. 1).

I. Once EMD initiates consultation under Section 106, NASA contacts consulting parties to confer on all steps of the Section 106 process, including identification and evaluation of potential historic properties within the APE, and potential effects on historic properties that are present within the APE. Consulting parties in the Section 106 process may include, as appropriate, SHPO, THPOs, federally recognized Tribes, representatives of local governments, individuals or organizations with a demonstrated interest in the effects of the undertaking on the historic

properties, and the public. NASA must give ACHP an opportunity to become a consulting party in the case of a determination of “Adverse Effect,” and ACHP may choose to be a consulting party.

II. EMD provides project-related information to consulting parties for review, including its determination of effect (“No Historic Properties Affected”; “No Adverse Effect”; or “Adverse Effect”). The length of SHPO review varies. The shortest length of review time is 30 days; however, there is no established timeline for an adverse effect. All consultation required under Section 106 must be completed prior to beginning the project.

III. Tribal representatives must be included in the scoping process for assessing environmental impacts. Other Native Americans, including traditional cultural leaders, may participate as interested parties. Impacts to treaty rights and resources important in sustaining Native American activities, such as plant harvesting, hunting, fishing, and water rights should, as appropriate, also be considered in the NEPA process. NEPA requires federal agencies to request comments of federally recognized Tribes (40 CFR Part 1503.1(a)(ii)). Review of proposed project plans will be coordinated with SHPO and appropriate THPOs through the submission of project information and draft reports.

A. Where SHPO and THPOs concur with NASA’s determination of effect, the final report will reflect that concurrence.

B. Where SHPO or THPOs do not concur with NASA’s determination of effect, NASA will continue to consult to reach agreement. When agreement cannot be reached, ACHP may be asked to resolve the disagreement and the disagreement will be so noted in the final report.