



National Phasing Programmatic Agreement (PA) 2019 Info Sheet

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The Forest Service’s multi-year projects that help improve forest health and prevent catastrophic wildfires can span thousands of acres, posing a challenge to timely compliance with Section 106 of the National Historic Preservation Act (NHPA). The NHPA requires agencies to analyze the effects of their proposed action on historic properties, including properties of traditional religious and cultural importance to an Indian tribe, prior to making decisions. The agency is proposing a National Phasing Programmatic Agreement (PA) as an alternative and optional procedure to help the Forest Service in its mission to protect and preserve historic and traditional cultural properties in America’s forests and grasslands for future generations.

Background: Phasing Section 106

The Section 106 regulations allow for phased identification and evaluation of historic properties for projects that consist of corridors, large land areas, or where access to properties is restricted. Forests are increasingly finding the need to phase Section 106, which is usually negotiated and documented in individual project PAs or in Memoranda of Agreement (MOA). The agency is developing a National Phasing PA to provide a consistent, national approach to phasing; to allow timely NEPA decisions; and provide a tool for forests to phase Section 106 without negotiating project-specific PAs. consultation.



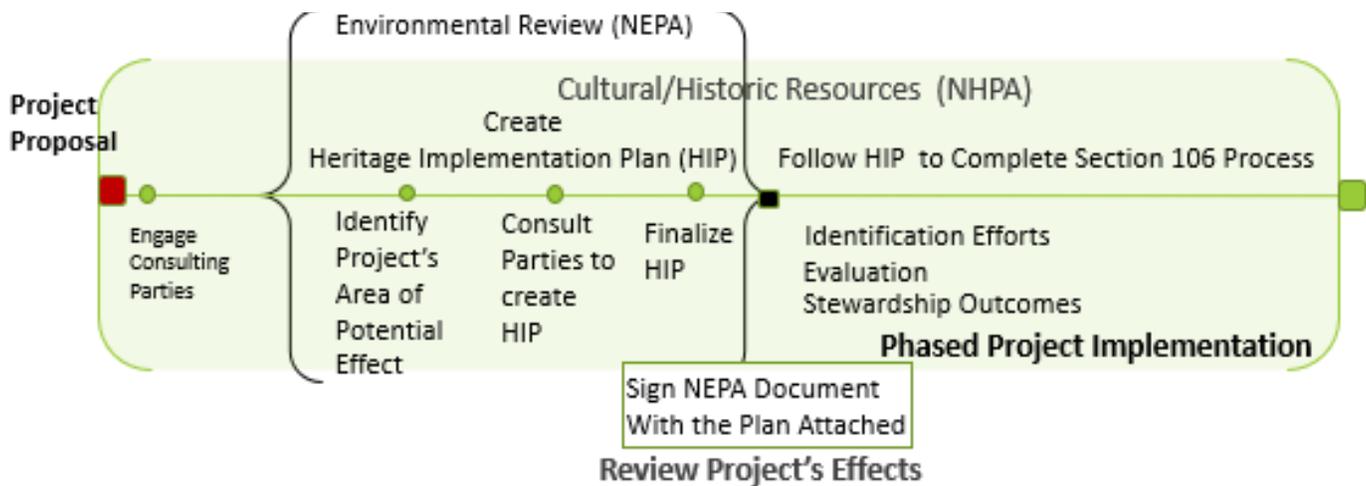
Large landscape vegetation projects, like tree-thinning to prevent wildfires (above), commonly require phasing Section 106.



Summary of Proposed Phasing PA

The Phasing PA is not intended to replace any local agreements or existing processes for routine projects. The PA requires the agency to consult early (before NEPA public notification) to develop a Heritage Implementation Plan (HIP). The HIP outlines the procedures and standards that fulfill Section 106 compliance and identifies opportunities for creative mitigation or stewardship activities. The finalized HIP is attached to the NEPA document and is implemented after the NEPA decision, throughout the life of the project.

Diagram of the Process Outlined in the Proposed Phasing PA



Tribal Consultation

The agency's National Heritage Program and Office of Tribal Relations are preparing to initiate a 120-day tribal consultation period with the intent of executing the PA in Spring 2020. Comments received from Tribes will be considered in the finalization of the PA.

How to Participate in the Design of the PA

The USDA Forest Service Heritage Program and Office of Tribal Relations have hosted webinars for tribes about the PA's purpose, content, and consultation timeline in late August 2019. You can view the recordings of the webinars at the [Office of Tribal Relations website](#). There, you can also download the draft of the Phasing PA, a set of Frequently Asked Questions, and a form for your comments.

Visit Office of Tribal Relations website at

<https://www.fs.fed.us/spf/tribalrelations/index.shtml>

Go to "USDA Forest Service Tribal Consultation Schedule" under the heading, "Current Collaboration & Consultation" on the right-hand side to access all the materials.

Tribal representatives are encouraged to submit comments directly to the Washington Office's Office of Tribal Relations and Heritage Program at SM.FS.HeritAgrmnt@usda.gov. Tribes are also welcome to schedule meetings with the Forest Service, should they wish, to further discuss the PA.





National Phasing Programmatic Agreement (PA) 2019 FAQs

Why is a programmatic agreement to phase big projects needed now?

The Forest Service is increasingly engaging in large projects to improve forest health and prevent catastrophic wildfires. These are often multi-year projects that require a phased approach to the identification of historic properties and the assessment of effects on them. The National Historic Preservation Act (NHPA) allows phasing after a NEPA decision document is signed. One way to do that is with a programmatic agreement (PA).

Why do you need a PA at the national level?

A national PA is a legally binding document that would minimize the need to negotiate individual project Programmatic Agreements on multiple forests. This provides consistency and saves time, which allows us to focus limited resources on heritage stewardship activities.

When you talk about NHPA “efficiencies” or “streamlining,” are you trying to leave tribes out of the process or shirk your consultation responsibilities?

The national PA would not change our trust responsibilities towards tribes, our legal obligations for nation-to-nation consultation, or our support of tribal sovereignty. We will still follow the Section 106 regulations for consultation, as well as the Forest Service’s tribal relations directives. The procedures in the PA would strengthen and support consultation with tribes and other parties.

How would this PA strengthen and support consultation?

It is our intent to provide opportunities for earlier and more thorough consultation and for a more proactive, collaborative approach towards our large projects. The PA would provide opportunities for SHPOs/THPOs, tribes and other interested parties to be involved with developing NEPA project alternatives and a Heritage Implementation Plan, which is explained below. This early involvement better protects tribal treaty rights, sacred sites, and TCPs.

Will this PA be utilized for projects that include tribally owned lands?

No, it can only be used for activities on non-tribally owned lands. If a phased project involves tribally owned lands, we will work locally with tribes to address it separately.

Is this PA for landscape restoration projects only or can it be used on pipeline, communications, and powerline projects?

The Section 106 regulations allow a phased approach for “where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted.” This PA may be used when proposed undertakings consist of large land areas, including restoration projects, pipelines, communication and/or powerline projects.



How will this PA allow for phasing of the Section 106 process?

It adjusts the standard Section 106 process by allowing for a NEPA decision while committing the Forest Service to completing the identification and assessment of effects on historic properties. It creates the opportunity to design a Section 106 compliance plan (Heritage Implementation Plan) collaboratively. This Plan outlines the agency's commitment to a phased approach to Section 106 that may be conducted after a NEPA document is signed, but prior to implementing aspects of the larger undertaking.

What's the consultation process for the development of this PA?

The Forest Service Office of Tribal Relations will facilitate government-to-government consultation with federally recognized tribes and Alaska Native Corporations. The tribal consultation period will be a minimum of 120 days in accordance with Forest Service directives. Consultation can continue beyond this minimum period up until the PA is finalized. Consultation for other parties is a 30-day comment period.

How can SHPOs/THPOs, tribes and other interested parties participate in the design of the PA?

The Forest Service will invite these parties to review the draft of the PA and submit comments. Interested parties may submit comments or set up meetings to discuss the Phasing PA. We will carefully consider all comments received throughout the consultation period.

Where can we find the consultation documents?

The consultation documents are available to download Office of Tribal Relations website. They are located in the "USDA Forest Service Tribal Relations Consultation Schedule" PDF under the "Current Collaboration & Consultation" heading on the right-hand side of their homepage:
<https://www.fs.fed.us/spf/tribalrelations/>.

Where can we submit comments or questions?

Tribal representatives may use the Comment Form to submit comments or questions directly to the Washington Office Heritage Program and the Office of Tribal Relations to SM.FS.HeritAgrmnt@usda.gov. Meetings and other forms of communication throughout the development of the PA are also welcome.

Who are the anticipated signatories for this Programmatic Agreement?

The Section 106 regulations require the Forest Service, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (NCSHPO) to sign the PA. NATHPO continues to be involved in the design of this PA, and we will seek Tribal input in the design of the PA over the 120-day consultation period.

What is the Heritage Implementation Plan?

The Heritage Implementation Plan (HIP) is a plan that outlines how the Forest Service will comply with Section 106 after a NEPA decision document is signed. The Forest Service, SHPOs/THPOs, tribes, and other interested parties develop the plan, which may include stewardship activities (e.g., nominating sites to the National Register, evaluating unevaluated sites, developing interpretive programs, etc.), and



standard historic property identification methods. It may also include creative mitigation, which gets away from past standard mitigation measures such as flag-and-avoid and document-and-destroy. The agency official signs the HIP prior to the NEPA decision document, and the HIP is maintained in the administrative record.

Is there a template of a HIP?

There is a proposed template for the HIP, however the content of the HIP is flexible depending on what consulting parties identify.

How will the Forest Service ensure that the HIP is implemented for multi-year projects?

The HIP is attached to the NEPA analysis document, which is frequently reviewed during the project implementation. Annual reporting will ensure that projects are tracked and accounted for. Consulting parties are also encouraged to collaborate with the agency in implementing the HIP.

How will this HIP affect everyone's workload?

Consultation with interested parties is required under the NHPA. This PA proposes that consultation begins early and does not necessarily add work. The extent of engagement and level of collaboration is at the discretion of consulting parties throughout the development and implementation of the HIP.

What if SHPOs/THPOs, tribes and interested parties do not have time for early collaboration on NEPA project alternatives and/or development of the HIP?

Participation is optional, but we encourage all parties to be proactive (rather than reactive) to project proposals. Early collaboration results in well-designed projects that avoid areas of high sensitivity and include outcomes beneficial to cultural resources.

Will Tribes receive compensation for consultation in the development of the HIP?

Generally, consultation under Section 106 does not warrant compensation. However, if there are opportunities for actions identified in the HIP that require expertise from Tribes, then Tribes can be potentially compensated for their expertise.

If no concurrence is required by SHPOs/THPOs on the HIP, then how is the HIP considered compliance with S106 and 36CFR800 for an undertaking?

The execution of the PA with ACHP and NCSHPO signatures fulfills compliance with Section 106. The HIP that is developed with the consulting parties represents a good faith effort to identify historic properties and mitigate effects.



What if consulting parties do not agree with the actions identified in the HIP?

The intent of consultation while developing the HIP is to reach agreement among consulting parties on its content. If there are concerns with the HIP, the proposed dispute resolution allows for parties to provide comments within a final 30-day review period. The Regional Forester may modify the HIP based on comments received. The Regional Forester will document their rationale for how they considered comments and will add this document to the consultation record.

We're used to working under an existing PA that allows phasing. Can we continue to use it or does this PA supersede it?

Existing PAs may still be used. This national PA, which would provide a framework for local collaboration, will not be mandatory.

Can we do a project-level phasing PA?

Yes, but you are encouraged to use this national PA rather than expend additional time on another PA, which can take 9 months on average.

Will there be training provided for the implementation of this PA?

Yes, the Washington Office will prepare training materials and make it available to interested parties. The proposed PA identifies a training requirement for Forest Service staff, such as Line Officers and Heritage Professionals before using the PA.

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