

THE SECTION 106 REVIEW PROCESS

Introduction

Oklahoma State Historic
Preservation Office

Workshop

May 4, 2016

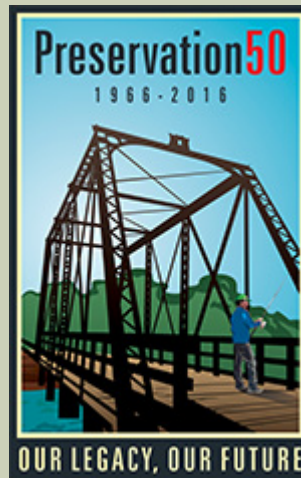
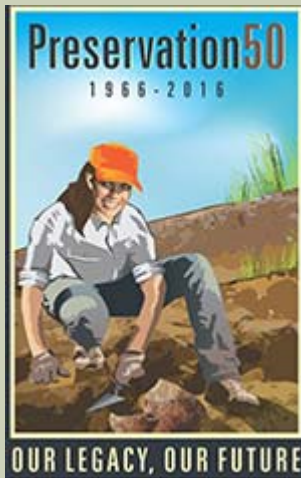
Preservation**50**
1966-2016

OKLAHOMA STATE HISTORIC PRESERVATION OFFICE (OK SHPO)

- National Register of Historic Places (NRHP)
- Survey and Inventory
- Review and Compliance (Section 106 Review)
- Preservation Tax Incentives
- Public Outreach and Technical Assistance

50TH ANNIVERSARY OF THE NATIONAL HISTORIC PRESERVATION ACT

Preservation**50**
1966-2016



RECODIFICATION OF THE NHPA

- Took effect on December 19, 2014
- NHPA
 - Old: 16 U.S.C. 470 et seq
 - New: 54 U.S.C. 300101 et seq
- Section 106
 - Old: 16 U.S.C. 470f
 - New: 54 U.S.C. 306108

NATIONAL HISTORIC PRESERVATION ACT (THE ACT)

- The spirit and direction of the Nation are founded upon and reflected in its historic heritage;
- The historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;
- Historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;
- The preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic and energy benefits will be maintained and enriched for future generations of Americans;
- The increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development.

NATIONAL HISTORIC PRESERVATION ACT

The Act

Advisory Council on
Historic Preservation
36 CFR Part 800

Section 106

National Register of
Historic Places

Historic Preservation Fund
Grants

SECTION 106

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall,

prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, shall take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register.

The head of any such Federal agency shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment with regard to such undertaking.

ACHP

36 CFR PART 800

PROTECTION OF HISTORIC PROPERTIES

Purpose: The Section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings.

Goal of Consultation: to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

Timing: The agency official must complete the Section 106 process prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license.

PARTICIPANTS IN SECTION 106

Federal Agencies

Advisory Council on Historic Preservation (ACHP)

State Historic Preservation Office (SHPO)

Oklahoma Archaeological Survey (OAS)

Tribal Historic Preservation Officer/101(d)(2) (THPO)

Indian Tribes

Local Government

Public and Others

ACHP FLOW CHART OF THE SECTION 106 PROCESS

Initiate Section 106 Process

Establish undertaking
Identify appropriate SHPO/THPO *
Plan to involve the public
Identify other consulting parties

No undertaking/no potential to cause effects

Undertaking is type that might affect historic properties

Identify Historic Properties

Determine scope of efforts
Identify historic properties
Evaluate historic significance

No historic properties affected

Historic properties are affected

Assess Adverse Effects

Apply criteria of adverse effect

No historic properties adversely affected

Historic properties are adversely affected

Resolve Adverse Effects

Continue consultation

Memorandum of Agreement

FAILURE TO AGREE

COUNCIL COMMENT

800.3 INITIATE THE SECTION 106 PROCESS

Initiate Section 106 Process
 Establish undertaking
 Identify appropriate SHPO/THPO *
 Plan to involve the public
 Identify other consulting parties

▶ *No undertaking/no potential to cause effects*

Undertaking is type that might affect historic properties

Identify Historic Properties
 Determine scope of efforts
 Identify historic properties
 Evaluate historic significance

▶ *No historic properties affected*

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Assess Adverse Effects
 Apply criteria of adverse effect

▶ *No historic properties adversely affected*

Historic properties are adversely affected

Resolve Adverse Effects
 Continue consultation

▶ *Memorandum of Agreement*

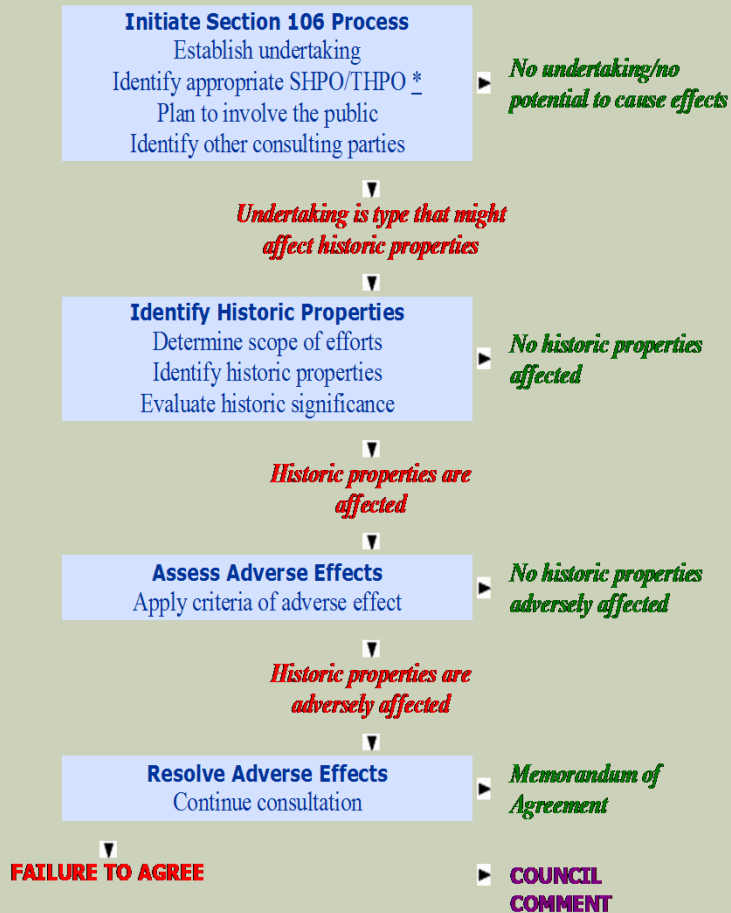
FAILURE TO AGREE

▶ **COUNCIL COMMENT**

- a. Establish the undertaking
 1. No potential to cause effects
- b. Coordinate with other reviews
- c. Identify appropriate SHPO and/or THPO
- d. Consultation on tribal lands
- e. Plan to involve the public
- f. Identify other consulting parties
- g. Expediting consultation

800.4

IDENTIFY HISTORIC PROPERTIES



- a. Determine scope
 1. APE
 2. Review existing information
 3. Seek information
 4. Gather information
- b. Identify historic properties
 1. Level of effort
 2. Phased identification

REASONABLE & GOOD FAITH EFFORT

Reasonable:

Direct and Indirect effects: documentation of the horizontal and vertical extent of the APE.

Summary of past planning, research, magnitude and nature of undertaking, federal involvement, nature and extent of potential effects on historic properties and the likely nature and location of historic properties within the APE.

A background review on historic properties in the APE.

Knowledge of applicable guidelines.

Familiarity of methodologies.

Description of steps that will be taken during field investigations, analysis of results and in reporting and consultation.

REASONABLE & GOOD FAITH EFFORT

Good Faith Effort:

Consultation with SHPO and/or THPO.

Section 106 review initiated in a timely manner.

Conducted by qualified individual(s) who meet the Secretary of the Interior's qualifications (SOI).

Acknowledge the special expertise of Indian tribes.

Project supported by adequate funding.

Is not compromised by lack of integrity or omission of evidence.

REASONABLE & GOOD FAITH EFFORT

What is NOT required:

The “approval” of the SHPO and/or THPO or other consulting party.

Identification of every historic property in the APE.

Investigations outside of, or below, a properly documented APE.

Ground verification of the entire APE.

800.4

IDENTIFY HISTORIC PROPERTIES

Initiate Section 106 Process
 Establish undertaking
 Identify appropriate SHPO/THPO *
 Plan to involve the public
 Identify other consulting parties

▶ *No undertaking/no potential to cause effects*

Undertaking is type that might affect historic properties

Identify Historic Properties
 Determine scope of efforts
 Identify historic properties
 Evaluate historic significance

▶ *No historic properties affected*

Historic properties are affected

Assess Adverse Effects
 Apply criteria of adverse effect

▶ *No historic properties adversely affected*

Historic properties are adversely affected

Resolve Adverse Effects
 Continue consultation

▶ *Memorandum of Agreement*

FAILURE TO AGREE

▶ **COUNCIL COMMENT**

(c)(1) Apply National Register Criteria

(c)(2) Determine whether a property is eligible

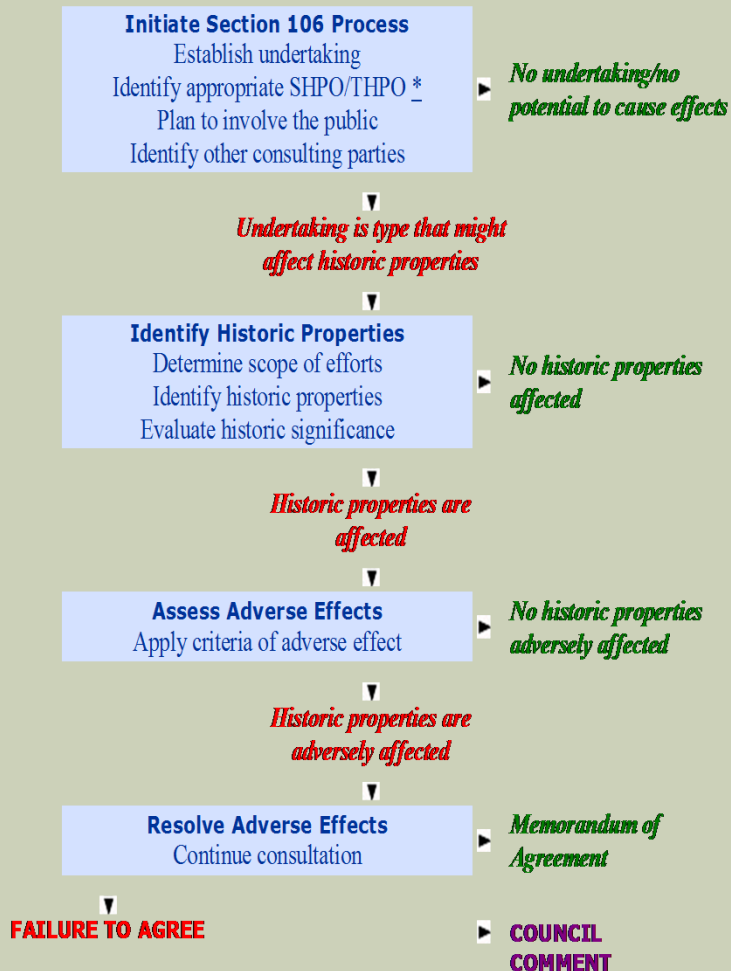
(d)(1) No historic properties affected

(d)(1)(i) 30 day review period, adequate documentation

(d)(2) Historic properties affected

800.5

ASSESS ADVERSE EFFECTS



a. Apply criteria of adverse effect to historic properties in APE.

Consider any views concerning effects from consulting parties and the public.

(a)(1) Criteria of adverse effects:
When an undertaking may alter, directly, indirectly any of the characteristics of a historic property that qualify the property for inclusion in the NR in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.

Reasonably foreseeable effects:
caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative

EXAMPLES OF ADVERSE EFFECTS

Physical destruction of or damage to all or part of the property

Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR Part 68)

Removal of the property from its historic location

Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance

Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features

Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe and

Transfer, lease, or sale of property out of federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long term preservation of the property's historic significance

CHILOCCO WIND FARM PROJECT KAY COUNTY, OK

December 20, 2013

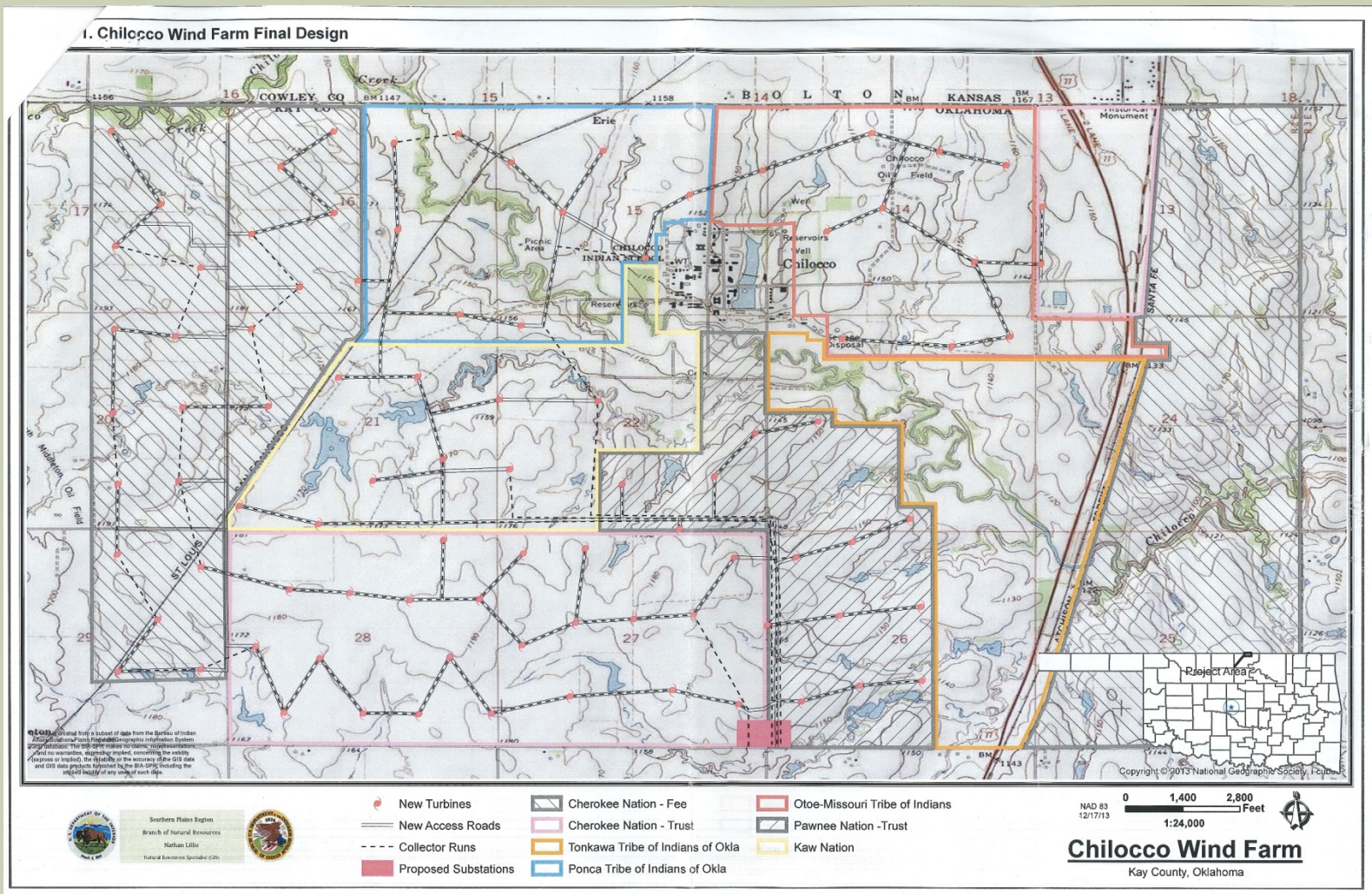
Bureau of Indian Affairs, Southern Plains Region Office
request letter to SHPO for review of a wind turbine farm consisting of
90 wind turbines, 3,000 acres

Project on Trust land, BIA will need to approve lease for development,
considered a Section 106 undertaking

APE: includes all locations which could experience ground disturbing
activities such as turbine placement locations, access roads, collector
cable runs, crane paths and a substation location.

In the APE: 3 new prehistoric sites recorded, avoided, no NR eligibility
assessed, one historic site (34KA448) and one NRHP listed property,
Chilocco Indian Agency School (CIS)

CHILOCCO WIND FARM MAP



CHILOCCO WIND FARM PROJECT KAY COUNTY, OK

Agency opinion on project affect:

The CIS is surrounded by the proposed wind farm. The CIS was listed on the NRHP under Criteria A and C. The CIS is owned by a partnership of the Ponca Tribe of Oklahoma, the Pawnee Nation, the Kaw Nation, the Otoe-Missouria Tribe of Indians and the Tonkawa Tribe of Oklahoma. The CIS will have no direct impact from the proposed wind farm as no activities will occur within the campus. Also, due to the extant tree vegetation surrounding the campus, there will be no indirect visual effect from the proposed wind farm. This office concurs with the recommendations in the [archaeological] report for no further archaeological work. Based on these findings, it is recommended that the proposed Chilocco Wind Farm as described in the report will have no effect to properties eligible or listed on the NRHP. It is recommended that the project proceed as planned.

CHILOCCO WIND FARM PROJECT

KAY COUNTY, OK

January 3, 2014

State Archaeologist/OAS response

Request for additional information

What amount of the APE was actually surveyed?

No summary of previous work or sites recorded

Historic-cultural background insufficient

January 10, 2014

SHPO response

Request for additional information

A map depicting the distance between the turbines and the boundary of CIS

A description of the turbines

The total acreage that was surveyed?

The search radius used for the background research?

Updated site form for 34KA448 (historic site)

Historic-post contact background summary and summary of the CIS?

Assessment of indirect effects?

Other consulting parties identified?

CHILOCCO WIND FARM PROJECT

KAY COUNTY, OK

February 21, 2014

BIA response for additional information:

Addendum to the archaeological report provided to OAS & SHPO

A site form for 34KA448 was not completed due to inaccessibility to property

Assessment of indirect effects, copy/paste from BIAs December 2012 letter: *The CIS will have no direct impact from the proposed wind farm as no activities will occur within the campus. Also, due to the extant tree vegetation surrounding the campus, there will be no indirect visual effect from the proposed wind farm.*

Identification of other consulting parties: *It is strictly tribal jurisdiction. No other entities were considered due to clear title of tribal lands held in trust by the US government.*

CHILOCCO WIND FARM PROJECT KAY COUNTY, OK

March 18, 2014

OAS response to additional information

No further comment, defer to SHPO on effect

March 21, 2014

SHPO response to additional information

Do not concur that the project will have no adverse effect on CIS

Request BIA consult with the ACHP

The entire wind farm development should be reviewed

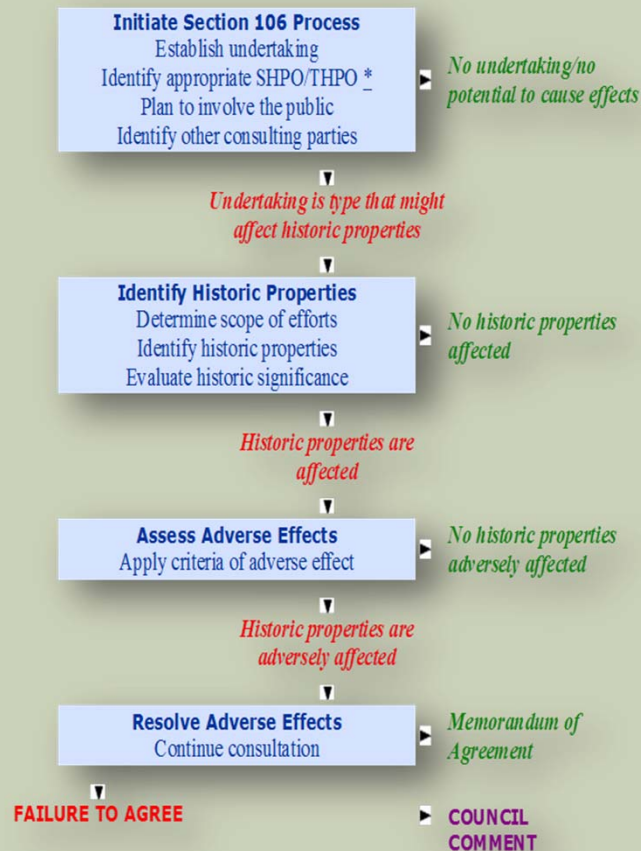
The wind farm will have a direct and adverse effect on the setting of the CIS and will diminish the integrity of the school

Question on cumulative effects not answered

Information on the vibration of the turbines but no information on the audible intrusion of 90 turbines on the setting of the school

800.6

RESOLVE ADVERSE EFFECTS



(a) Continue consultation to develop & evaluate alternatives, modifications to avoid, minimize or mitigate adverse effects

(a)(1) Notify the Council of the adverse effect finding, invite participation in consultation

(a)(2) Involve consulting parties

(a)(3) Provide documentation

(a)(4) Involve the public

(b) Resolve adverse effects

(c) Develop a MOA

CHILOCCO WIND FARM PROJECT

KAY COUNTY, OK

April 28, 2014

ACHP response to the BIA

The effects of the wind farm's visual, atmospheric & audible elements on the CIS's integrity was not fully considered

What other reasonably foreseeable development might occur that would diminish the CIS?

Clarify the consultation process with the public and other interested parties

Recommend BIA revise finding to "Adverse Effect" and continue consultation with SHPO and the involved tribes to consider alternatives and develop an MOA

CHILOCCO WIND FARM PROJECT KAY COUNTY, OK

June 21, 2014

SHPO letter to BIA summarizing in-person meeting

Cannot agree to a “no adverse effect” finding.

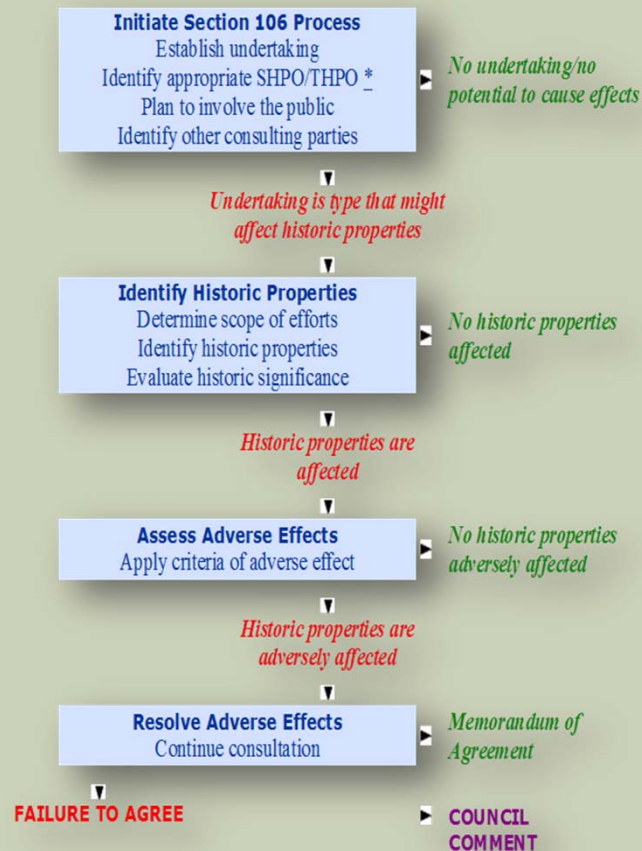
Two options:

BIA revise finding to “adverse effect” develop an MOA

BIA notify the ACHP that it affirms original opinion and conclude 106 with that notification

800.7

FAILURE TO AGREE



Termination of consultation

1. Agency official terminates consultation.
2. SHPO terminates consultation.
3. THPO terminates consultation.
4. ACHP terminates consultation.

CHILOCCO WIND FARM PROJECT KAY COUNTY, OK

800.7(1) Agency Official terminates consultation

August 14, 2014

BIA response to ACHP letter

Affirm initial finding of “no adverse effect”

Reasonable foreseeable development

Other consulting parties:

May 27, 2014 letter to Chilocco Indian School Alumni

July 3, 2014 public notice in the Newkirk Herald Journal

Draft Environmental Assessment:

Visual

Noise

Cumulative

COORDINATE WITH OTHER REVIEWS

36 CFR Part 800.3(b) Coordinate with other reviews

36 CFR Part 800.8 Coordinate with NEPA

The agency official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archaeological Resources Protection Act and agency-specific legislation, such as section 4(f) of the Department of Transportation and HUDs environmental review procedures under 24 CFR Part 58.

COORDINATE WITH OTHER REVIEWS

Council on Environmental Quality
National Environmental Policy Act

40 CFR Part 1502.25(a)

Environmental Review & Consultation Requirements

To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish & Wildlife Coordination Act, the National Historic Preservation Act of 1966, the Endangered Species Act of 1973 and other environmental review laws and executive orders.

**SECTION 106
36 CFR PART 800.8
NEPA
40 CFR PART 1502.25**

**Section 106
ACHP 36 CFR Part 800**

- **Initiate the process**
- **Identify historic properties**
- **Assess adverse effects**
- **Resolve adverse effects**
- **Agreement (MOA/PA) or Council Comment**

**NEPA
CEQ 40 CFR Parts 1500-1508**

- **Scoping**
- **Prepare Preliminary EA/Draft EIS**
- **Public Comment Period**
- **Prepare EA/Final EIS**
- **Publish FONSI/ROD**
- **Proceed with Action**

800.8

106 COORDINATION WITH NEPA

Early coordination

Type of review

Consulting party roles

Stakeholder and public involvement

Inclusion of historic property issues

Scope of review

Categorical exclusions

SECTION 106 IN OKLAHOMA CASE STATISTICS FOR FISCAL YEAR 2015

October 1, 2014 - September 30, 2015

2,537: Undertakings reviewed

8,974: Properties evaluated for National Register eligibility

229: Properties determined eligible for the National Register

164: Effect findings on properties already listed on or determined eligible for the National Register

1,583: Requests for Additional Information

9: Memorandum of Agreement or Programmatic Agreements executed

ADEQUATE DOCUMENTATION

36 CFR Part 800.11(a) Documentation Standards

The agency official shall ensure that a determination, finding or agreement is supported by sufficient documentation to enable any reviewing parties to understand its basis.

The agency official shall provide such documentation to the extent permitted by law and within available funds.

If the Council, or the SHPO and/or THPO, determines the applicable documentation standards are not met, the Council or the SHPO and/or THPO, shall notify the agency official and specify the information needed to meet the standard.

SECTION 106 REVIEW REQUEST TO THE OK SHPO



MODOC TRIBE OF OKLAHOMA

418 G Southeast
Miami, Oklahoma 74354
918-542-1190 • FAX 918-542-5415

3/16/2016

State Historic Preservation Offices
Oklahoma Historical Society
Oklahoma History Center
Attn: Charles Wallis
800 Nazih Zuhdi Drive
Oklahoma City, OK 73105

Dear Sir:

This letter is to request your views concerning the identification of historic properties for the purpose of compliance with Section 106 of the National Historic Preservation Act. The Modoc Tribe Housing Authority intends to use Indian Housing Block Grant (IHBG) funds, authorized by the Native American Housing Assistance and Self-Determination Act of 1996, to develop 10 acres in rural Ottawa County, Oklahoma. The development will be completed in three phases and will include:

Phase 1 – Infrastructure – Construction of Roads (17,600 ft.), Water Lines (1,050 linear ft.), Elevated Water Storage Tank (100,000 gallons), Electric Utility Line (4,500 linear ft.), Sanitary Sewer Collection System (950 linear ft.), Stormwater Collection System, and Onsite Sand Filter Wastewater Treatment System. **Phase 2 – Emergency Services** – Construction of Tribal Fire Station. **Phase 3 – Tribal Services** – Construction of Tribal Community Center, Wellness Center, and Elder's Assisted Housing.

Project Name: Modoc Tribe Land Development Project

Nearest Physical Address: 14100 S. 705 Rd. (aka. Stateline Rd.) Wyandotte, OK 74370

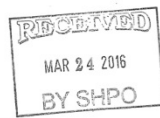
Legal Description: A tract of land in the N1/2 of the E1/2 of irregular Section 33, Township 28 North, Range 25 East of the Indian Meridian, Ottawa County, Oklahoma, more particularly described as follows: the south 581.00 feet as measured on the east and west sides of Government Lot 68, Modoc Indian Reservation, Ottawa County, Oklahoma, less the east 46.60 feet.

See site maps of the proposed project area attached.

The Tribe's NEPA review has found that this proposed project is not eligible for, nor near any properties listed on the National Register for Ottawa County, OK and no historic properties will be affected.

We are requesting, from your agency, written comments/recommendations or written verification that your agency has no comments or recommendations on this property. If we receive no response from your office within thirty days of the date of this letter, we will assume your approval. In order to identify any cultural or archeological resources within the area of the proposed project, the Tribe is also consulting with THPO's from the Osage Nation, Quapaw Tribe, Seneca-Cayuga Tribe, and Modoc Tribe. If you require additional information or have any questions, please do not hesitate to contact our environmental contractor at [REDACTED]

Sincerely,



Deputy State Historic Preservation Officer
State Historic Preservation Office
Oklahoma Historical Society
800 Nazih Zuhdi Drive
Oklahoma City, OK 73105

- ✓ agency/organization name and return address;
- ✓ Clearly identifies the federal agency which has direct or indirect jurisdiction over the project or that has the authority to license or permit the undertaking;
- ✓ Identifies the exact federal funding, licensing, or permitting program under which your request is submitted;
- ✓ State the status of delegation of authority;
- ✓ Include the statement that the request is made under Section 106 of the National Historic Preservation Act;
- ✓ A description of the proposed project
- ✓ Exact locational information
- ✓ A map or aerial of the project area with the project location clearly depicted
- ✓ Archaeological Site form or Historic Preservation Resource Identification Form

SHPO AND OAS

Oklahoma State Historic Preservation Office

1967 Appointment of a State Liaison Officer (State Historic Preservation Officer/SHPO)

1975 SHPO separate division from Oklahoma Historical Society (OHS)

1976 SHPO and OAS enter into cooperative agreement approved by NPS

Oklahoma Archeological Survey

1968 OAS established as a research adjunct

1970 Senate Bill 623 creation of the OAS

- Excavation for the purpose of securing data and objects relating to early man in OK
- Research in OK archaeology and encouragement of public cooperation in the preservation of OK antiquities
- Research into and study of anthropology and related social and physical sciences to plan and aid in the discovery of archaeological sites and artifacts and in their proper assessment and preservation once discovered
- Publication of findings in terms of their scientific, popular and cultural values
- Display and custodianship of relics, artifacts, sites, and other tangible results of the operations of the survey
- Educational activities and
- To initiate, operate, and maintain a program of archaeology which shall include the specific responsibilities set out above which shall not be limited to those areas of action.

SECRETARY OF THE INTERIOR QUALIFICATIONS

800.2(a)(1)

Section 112(a)(1)(A) of the Act requires each Federal agency responsible for the protection of historic resources, including archaeological resources, to ensure that all actions taken by the employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

800.4

Reasonable & good faith effort is carried out by a qualified individual or individuals who meet the Secretary of the Interior's qualification standards and have a demonstrated familiarity with the range of potentially historic properties that may be encountered, and their characteristics...

NHPA, Section 112(a)

Each Federal agency that is responsible for the protection of historic resources, including archaeological resources pursuant to this Act or any other law shall ensure each of the following -

Section 112(a)(1) (A)

All actions taken by employees or contractors of such agency shall meet professional standards under regulations developed by the Secretary in consultation with the Council, other affected agencies, and the appropriate professional societies of the disciplines involved, specifically archaeology, architecture, conservation, history, landscape architecture, and planning.

SECRETARY OF THE INTERIOR QUALIFICATIONS

History: bachelor/graduate degree in history or closely related field, 2 years full-time professional experience in research, writing, teaching, interpretation with an academic institution, historic organization/agency, museum or other professional institution OR substantial contribution through research & publication in history.

Archaeology: graduate degree in archaeology, anthropology, or closely related field, 1 year of full-time professional experience/training in research, administration or management, 4 months of supervised field experience in N. American archaeology, demonstrated ability to complete research & 1 year of professional supervisory experience in prehistoric or historic period archaeological study.

SECRETARY OF THE INTERIOR QUALIFICATIONS

Architectural history: bachelor/graduate degree in architectural history, art history, historic preservation, 2 years of full-time experience in research, writing or teaching in American architectural history or restoration architecture with an academic institution, historic organization or agency, museum OR substantial contribution through research & publication in American architectural history.

Architecture: professional degree in architecture plus 2 years of full-time experience in architecture, or a state license to practice architecture.

Historic Architecture: professional degree in architecture or a state license to practice architecture plus 1 year of graduate study in architectural preservation, American architectural history, preservation planning OR 1 year of full-time professional experience on historic preservation projects.

FREQUENTLY ASKED QUESTIONS

- If project area was surveyed years ago with no NR eligible properties identified, assume area contains no eligible properties?
- What kinds of properties are eligible for the National Register?
- If there are no properties listed on the National Register in the project area, is it necessary to consult with the SHPO?
- What happens if National Register listed or eligible properties are within the project area?
- If I don't agree with the SHPOs opinion, what should I do?
- Is it ok to say that a property is eligible to avoid research and evaluation?

RESPONSES REGARDING EFFECT

- ✓ No effect on historic properties.
- ✓ No adverse effect on historic properties.
- ✓ Find that the project will have no adverse effect on historic properties provided certain conditions are met.
- ✓ Find that the project will have an adverse effect on historic properties.

RESOLVING ADVERSE EFFECTS

Do you need a Section 106 Agreement?

If an undertaking will or may adversely affect historic properties (any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places).

Then Section 106 regulations at 36 CFR § 800.6(b)(1)(i-iv) call for the federal agency to consult with the State and/or Tribal Historic Preservation Officer (SHPO, THPO) and other parties to negotiate and execute a Section 106 agreement document that sets out the measures the federal agency will implement to resolve those adverse effects through *avoidance, minimization, or mitigation*.

AGREEMENT DOCUMENTS TO MITIGATE ADVERSE EFFECTS ON HISTORIC PROPERTIES

The federal agency is responsible for preparing the agreement document

Memorandum of Agreement (MOA) or a Programmatic Agreement (PA).

Legally binding contracts

PROGRAMMATIC AGREEMENT (PA)

PAs are used for multiple or complex federal undertakings where:

1. Effects to historic properties cannot be fully determined in advance;
2. For federal agency programs;
3. For routine management activities by an agency or;
4. To tailor the standard Section 106 process to better fit in with the agency management or decision making.

MEMORANDUM OF AGREEMENT (MOA)

MOAs are used to resolve *known* and *definable* adverse effects on historic properties that result from a federal undertaking.

CONSULTATION FOR A SECTION 106 AGREEMENT DOCUMENT

1. Why properties are significant, and to whom;
2. What historic properties may be affected by an undertaking;
and
3. How any adverse effects to them might be avoided,
minimized or mitigated.



CONSULTING PARTIES

Signatories

Invited
Signatories

Concurring
Parties

EXAMPLE MOA REPLACEMENT OF SH 66 BRIDGE OVER BIRD CREEK

- 1. ODOT bridge replacement project determined by Federal Highway Administration (FHWA) to be a Section 106 undertaking**
- 2. Bridge has been determined eligible for listing on the NR**
- 3. Replacement of the bridge has been determined to be an adverse effect**
- 4. FHWA has decided to develop an MOA to outline the mitigation of the adverse effect of the bridge's replacement**
- 5. Consulting parties: develop mitigation measures that will be outlined in MOA**
- 6. Mitigation measures**

MOA

REPLACEMENT OF SH 66 BRIDGE OVER BIRD CREEK

**MEMORANDUM OF AGREEMENT (MOA)
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICER,
THE OKLAHOMA DEPARTMENT OF TRANSPORTATION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
REPLACEMENT OF THE STATE HIGHWAY 66 BRIDGE OVER BIRD CREEK**

WHEREAS, the Federal Highway Administration (FHWA) has determined that Federal-Aid Project BRFY-166C(130); State Job 20899(04), bridge replacement on SH-66 over Bird Creek (former Verdigris River Channel) will have an adverse impact to the existing SH-66 Mixed Truss bridge (Structure # 6602 0368 WX), a property determined eligible for listing on the National register of Historic Places (NRHP), and has consulted with the Oklahoma State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f);

WHEREAS, in accordance with 36 CFR Part 800.6(a)(1), the FHWA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen to participate in the consultation pursuant to 36 CFR Part 800.6(a)(1)(iii);

WHEREAS, the FHWA has consulted with the Cherokee Nation of Oklahoma, Delaware Tribe of Indians, Osage Nation, United Keetoowah Band of Cherokee, Kialegee Tribal Town, Muscogee (Creek) Nation, and the Wichita and Affiliated Tribes of Oklahoma in accordance with 36 CFR Part 800.2(c)(3); and determined that no properties of traditional religious and cultural significance will be affected by this undertaking and

WHEREAS, the following parties have been consulted in accordance with 36 CFR Part 800.2(c)(5) and invited to concur in the MOA in accordance with 36 CFR Part 800.6(c)(3): Preservation Oklahoma, Oklahoma Route 66 Association; Historic Bridge Foundation, National Park Service Route 66 Corridor Preservation Program and

WHEREAS, the following parties have agreed to be concurring parties to the MOA: Preservation Oklahoma, Oklahoma Route 66 Association; Historic Bridge Foundation, National Park Service Route 66 Corridor Preservation Program and

WHEREAS, the City of Catoosa has been consulted in accordance with 36 CFR Part 800.2(c)(3) and invited to participate as a signatory to the MOA in accordance with 36 CFR Part 800.6(c)(2) and

Title:

Memorandum of agreement among the Federal Highway Administration, the Oklahoma State Historic Preservation Officer, the Oklahoma Department of Transportation, and the Advisory Council on Historic Preservation regarding replacement of the State Highway 66 Bridge over Bird Creek.

MOA

REPLACEMENT OF SH 66 BRIDGE OVER BIRD CREEK

**MEMORANDUM OF AGREEMENT (MOA)
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE OKLAHOMA STATE HISTORIC PRESERVATION OFFICER,
THE OKLAHOMA DEPARTMENT OF TRANSPORTATION,
AND THE
ADVISORY COUNCIL ON HISTORIC PRESERVATION
REGARDING
REPLACEMENT OF THE STATE HIGHWAY 66 BRIDGE OVER BIRD CREEK**

WHEREAS, the Federal Highway Administration (FHWA) has determined that Federal-Aid Project BRFY-166C(130); State Job 20899(04), bridge replacement on SH-66 over Bird Creek (former Verdigris River Channel) will have an adverse impact to the existing SH-66 Mixed Truss bridge (Structure # 6602 0368 WX), a property determined eligible for listing on the National register of Historic Places (NRHP), and has consulted with the Oklahoma State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f);

WHEREAS, in accordance with 36 CFR Part 800.6(a)(1), the FHWA has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP has chosen to participate in the consultation pursuant to 36 CFR Part 800.6(a)(1)(iii);

WHEREAS, the FHWA has consulted with the Cherokee Nation of Oklahoma, Delaware Tribe of Indians, Osage Nation, United Keetoowah Band of Cherokee, Kialegee Tribal Town, Muscogee (Creek) Nation, and the Wichita and Affiliated Tribes of Oklahoma in accordance with 36 CFR Part 800.2(c)(3); and determined that no properties of traditional religious and cultural significance will be affected by this undertaking and

WHEREAS, the following parties have been consulted in accordance with 36 CFR Part 800.2(c)(5) and invited to concur in the MOA in accordance with 36 CFR Part 800.6(c)(3): Preservation Oklahoma, Oklahoma Route 66 Association; Historic Bridge Foundation, National Park Service Route 66 Corridor Preservation Program and

WHEREAS, the following parties have agreed to be concurring parties to the MOA: Preservation Oklahoma, Oklahoma Route 66 Association; Historic Bridge Foundation, National Park Service Route 66 Corridor Preservation Program and

WHEREAS, the City of Catoosa has been consulted in accordance with 36 CFR Part 800.2(c)(3) and invited to participate as a signatory to the MOA in accordance with 36 CFR Part 800.6(e)(2) and

Preamble
Undertaking
APE
Historic Properties
Parties
Commitments

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REPLACEMENT OF SH 66 BRIDGE OVER BIRD CREEK

Stipulations

NOW, THEREFORE, FHWA, Oklahoma Department of Transportation (hereafter referred to as the Department), and the Oklahoma SHPO, the ACHP and the City of Catoosa agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS
BIRD CREEK MIXED TRUSS
STRUCTURE # 6602 0368 WX

FHWA will ensure that the following measures are carried out:

I. Stipulations.

1. Prior to its demolition or removal, the Department will record the existing 1936 truss (Structure # 6602 0368 WX) bridge as well as the existing setting which includes the 1956 mixed truss "Sister Bridge" at the equivalent of Level II documentation as specified by the Historic American Engineering Record (HAER) and incorporated in the 1993 *Oklahoma Historic Bridge Project Preservation and Management Plan*, as approved by the Oklahoma SHPO. This will include the following:

A. High Quality, 35 mm archival-quality black and white photographs, of the bridge documenting its present appearance and major structural or decorative details. The photographs will be a minimum 4" x 6" and no larger than 8" x 10", and will be clearly labeled with the following information:

- a. Name of property;
- b. Location (county, city, state, and street address);
- c. Name of photographer;
- d. Date of photograph;
- e. Location of photographic negative;
- f. Indication of direction camera is pointing;
- g. Number of photograph in series

B. Photographic reproduction of selected original construction plans and historic photographs, if they exist.

C. Preparation of a brief written technical description of the bridge and historical summary.

All documentation will be edited, catalogued, packaged and delivered to Oklahoma SHPO in a manner acceptable to the Oklahoma SHPO. The Oklahoma SHPO will be the repository for the documentation.

2. The Department will produce, or cause to produce a video documentary of the history of the 1936 and 1956 "Sister Bridges". The documentary will be made publicly accessible through a web based application and/or video media distribution within 18 months of the effective date of

MOA

REPLACEMENT OF SH 66 BRIDGE OVER BIRD CREEK

such inspection is scheduled for 2012. For the duration of this MOA, the Department shall inform all consulting parties of the results of each inspection.

B. The Department shall make all feasible and reasonable repairs as necessary to maintain the structural integrity and load carrying capacity of the bridge. The following repair work is scheduled as indicated:

1. The Department will repaint the SH-66 eastbound bridge in FY 2015. The paint project will consist of preparing bridge surfaces by removing existing paint and applying new paint, which meets current standards per Sections 512 and 730 of the 2009 Standard Specifications for Highway Construction (www.okladot.state.ok.us/c_manuals/specbook/2009specbook.pdf), and the appropriate curing process will occur. The original color of the bridge will be matched as closely as possible.

2. The Department will subject the SH-66 eastbound bridge (Structure # 6602 0368 EX) to a joint/seal bridge project in FY 2015. The project will consist of cleaning and repairing critical bridge components (such as seats, pier caps, bearing shoes and plates) as necessary as well as rehabilitation of expansion joints and any major concrete repairs if necessary.

C. FHWA and the Department shall consult with the Oklahoma SHPO and other consulting parties with a demonstrated interest in the undertaking in accordance with the standard review process set forth in 36 CFR Part 800 for any modification of the bridge that meets the definition of "undertaking" as set forth in these regulations.

II. Dispute Resolution. Should any signatory party to this MOA object at any time to the actions proposed or the manner in which the terms of this MOA are implemented, FHWA shall consult with such party to resolve the objection. If FHWA determines that such objection cannot be resolved, FHWA will:

A. Forward all documentation relevant to the dispute, including FHWA's proposed resolution, to the ACHP. The ACHP shall provide FHWA with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and concurring parties, and provide them with a copy of this written response. FHWA will then proceed according to its final decision.

B. If the ACHP does not provide its advice regarding the dispute within the thirty

Dispute Resolution
Amendment
Termination
Duration

Unanticipated
Discovery

Emergency Situations

ONLINE RESOURCES

Oklahoma Historic Preservation Office
Review & Compliance Manual (Section 106)

<http://www.okhistory.org/shpo/section106.htm>

Advisory Council on Historic Preservation (ACHP)

<http://www.achp.gov>

Secretary of the Interior Standards

https://www.nps.gov/history/local-law/arch_stnds_9.htm

Fees in the Section 106 Review Process (ACHP)

<http://www.achp.gov/regs-fees.html#appro>

ACHP Guidance on Agreement Documents

<http://www.achp.gov/agreementdocguidance.html>

Handbook for Integrating NEPA and Section 106

<http://www.achp.gov/nepa106.html>