

Human Rights and Corporate Responsibility in the Shift to the Green Economy

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United Nations

International Expert Group Meeting

“Indigenous Peoples in a Greening Economy”

University of Colorado School of Law

January 24, 2024

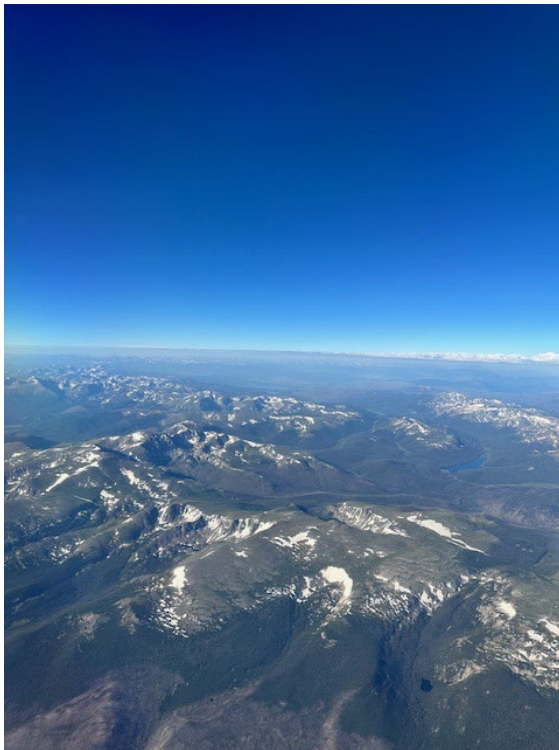
Discussion Topics



- **What legal mechanisms exist that can incorporate human rights into green economy programs and projects?**
 - In the U.S., same mechanisms for green and non-green programs and projects.
 - Sources of authority requiring tribal consultation; Focus on the National Historic Preservation Act (NHPA) and other sources of tribal consultations
 - Comparisons: DAPL and Ruby Pipelines; Vineyard Wind; Osage Wind
- **Corporate Responsibility?**
- **Safeguards on Human Rights and Environmental Risks?**

Extensive federal permitting process for infrastructure projects is both a challenge and an opportunity

- Sources of authority requiring significant process
- Focus on the National Historic Preservation Act (NHPA)
- Balancing values



Numerous Sources of Authority for Tribal Consultation on Off-Reservation Projects

- National Historic Preservation Act (NHPA), Section 106 (47 U.S.C. § 470f) and its implementing regulations (36 C.F.R. Part 800)
- National Environmental Policy Act (NEPA) (42 U.S.C. §§ 4321-4347) and its implementing regulations (40 C.F.R. §§ 1500-1518)
- Archaeological Resources Protection Act (ARPA) (16 U.S.C. § 470aa *et seq.*)
- Antiquities Act (16 U.S.C. § 431 *et seq.*)
- Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. § 3001)

More Sources of Authority for Tribal Consultation on Off-Reservation Projects

- American Indian Religious Freedom Act (42 U.S.C. § 1996 *et seq.*)
- Religious Freedom Restoration Act (42 U.S.C. § 2000bb *et seq.*)
- Presidential Memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments”
- Executive Order 13007, “Indian Sacred Sites” (May 24, 1996)
- Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments” (Nov. 6, 2000)

More Sources of Authority for Tribal Consultation on Off-Reservation Projects

- **Presidential Memorandum of November 5, 2009, “Memorandum for the Heads of Executive Departments and Agencies”**
- **Executive Order 13604, “Improving Performance of Federal Permitting and Review of Infrastructure Projects ” (Mar. 22, 2012)**
- **Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships (Jan. 26, 2021)**
- **Agency handbooks and manuals**
- **International Law**
- **Inherent Tribal Sovereignty**

National Historic Preservation Act of 1966

- Sets out national policy on cultural heritage and historic preservation

Section 106 of NHPA:

- Procedural statute
- Applies to federal or federally assisted undertakings in any state on federal, state, local, tribal and private lands
- Implemented by Advisory Council on Historic Preservation's (ACHP's) regulations



Procedural, Not Substantive Rights

- The NHPA “creates a mechanism to promote these values neither by forbidding the destruction of historic sites nor by commanding their preservation, but instead by ordering the government to take into account the effect any federal undertaking might have on them.”

United States v.
162.20 Acres of
Land More or Less
Situated in Clay
County, State of
Mississippi, 639
F.2d 299, 302 (5th
Cir. 1980)



When does section 106 apply?

- **Applies when 2 thresholds are met:**
 - (1) there's an undertaking, and
 - (2) that action has the potential to affect historic properties



What is an undertaking?

- Project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a federal agency
- Projects carried out by or on behalf of a federal agency
- Projects carried out with federal financial assistance
- Projects requiring a federal permit, license, or approval



What's a historic property?

- Prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register
- Includes properties of traditional religious and cultural importance to Indian tribes or Native Hawaiian organizations meeting National Register criteria. 16 U.S.C. §470a(d)(6)(A); 36 C.F.R. § 800.1. A traditional cultural property (“TCP”) is defined as a property associated with cultural practices or beliefs in a living community that are: (a) rooted in history, and (b) important to maintaining its cultural identity.
- Not as broad as a “cultural resource,” which must be considered under NEPA



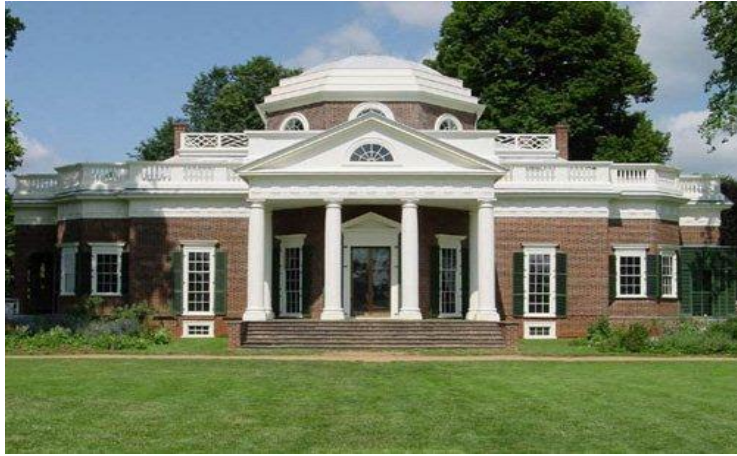
The National Register of Historic Places

- **Maintained by the Secretary of Interior through the National Park Service**
- **Keeper of the National Register responsible for listing historic properties and determining eligibility**
- **To be listed, property must meet Criteria for Evaluation**
 - Be associated with significant events, or
 - Be associated with persons of significance in our past, or
 - Embody distinctive characteristics of a type, period, or method of construction representing the work of a master or presenting high artistic values, or
 - Yield or be likely to yield information important in prehistory or history
- **Property must also possess integrity of features necessary to convey significance**

Elements of the Section 106 Process

- 1. Identification of consulting parties**
 - 2. Identification of historic properties affected by the undertaking**
 - 3. Assessment of the undertaking's effects on those properties**
 - 4. Development of methods to minimize or mitigate any adverse effects on historic properties**
- 4 steps known as “consultation process”**

Monticello, Charlottesville, Virginia



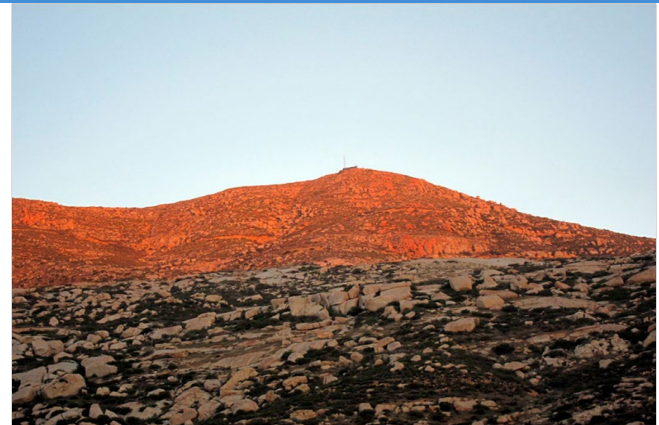
“High Water Mark,” Cemetery Ridge, Gettysburg Battlefield



Three Mile Gulch, Park County, Colorado



Kuchamaa Peak, Tecate, California



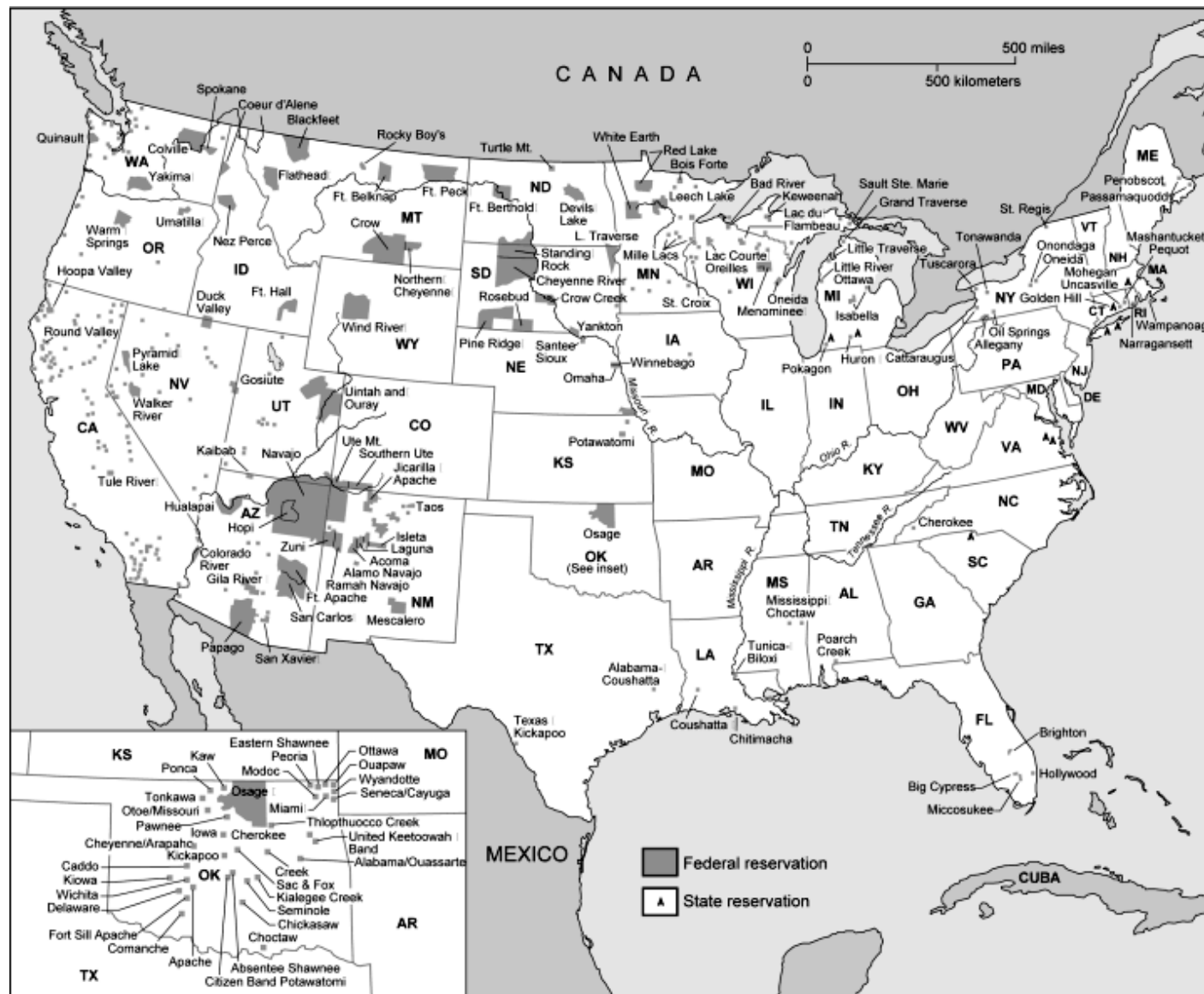
What is section 106 Consultation?

- The process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters that arise in the section 106 process
- Consulting parties don't have veto power over each other, the project, or terms of any agreement addressing adverse effects on historic properties
- As long as the agency seeks and considers the views of the consulting parties, it has met its section 106 obligations

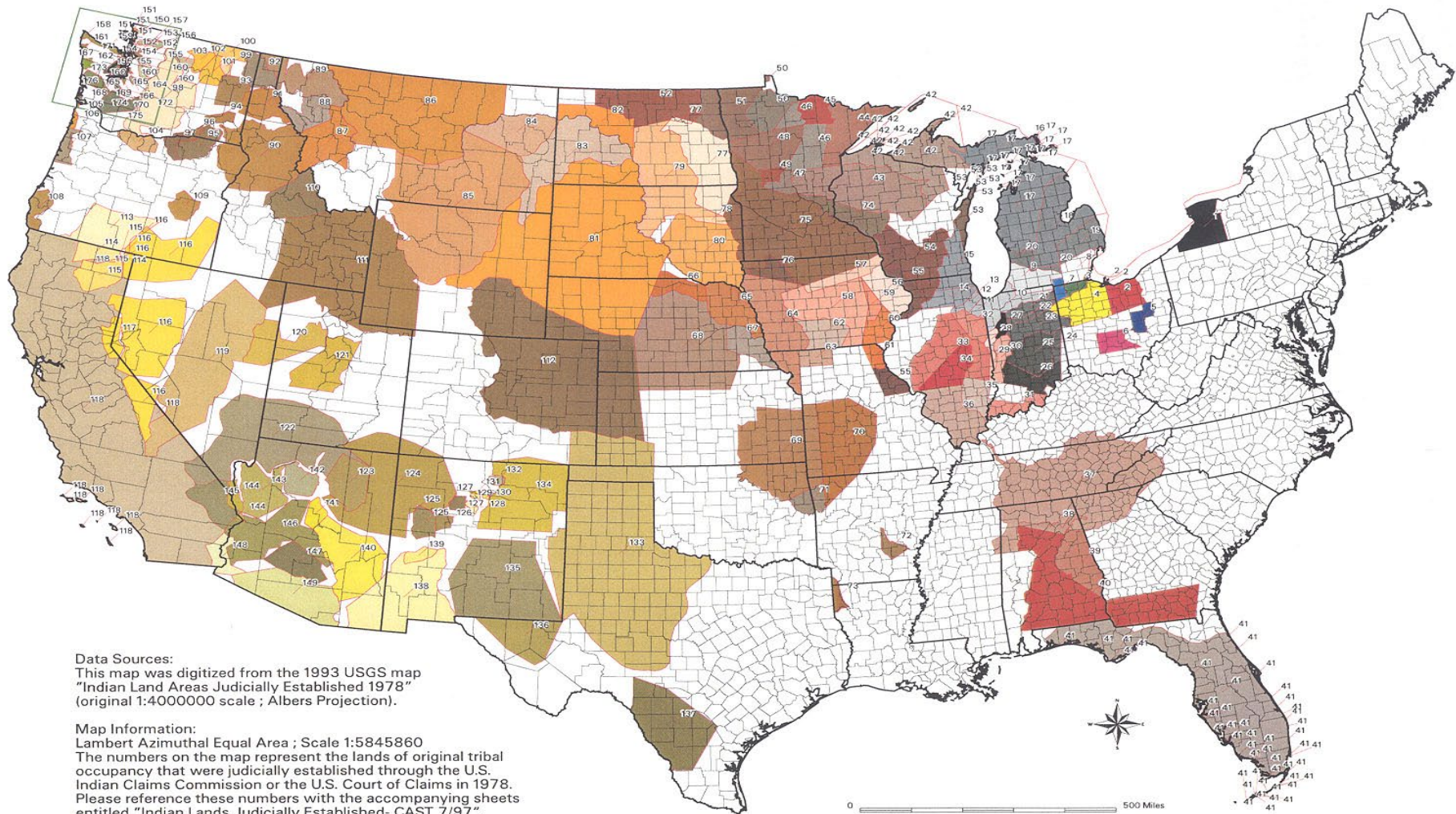
Step 1: Identifying Consulting Parties

- **Once an undertaking has been established, the federal agency must identify the parties entitled to be consulting parties and must invite them to participate as such**
- **Depending on where historic properties are located, consulting parties may include**
 - SHPO
 - Tribal Historic Preservation Officer (THPO)
 - Tribe's designated representative
 - Project proponent
 - Local governments
 - ACHP
 - Others

Indian Reservations in the Continental United States



Indian Land Areas Judicially Established 1978



Step 2: Identifying Historic Properties

- **After identifying consulting parties, agency reviews information on historic properties in Area of Potential Effects (APE)**
 - Based on information, agency makes a “reasonable and good faith effort” to carry out identification efforts
 - Includes discussions with consulting parties and tribes
 - If agency finds no historic properties, finding is documented, sent to consulting parties and public, and agency may approve the undertaking
 - If agency finds historic properties may be affected within the APE, process moves into assessment phase

Step 3: Assessing Adverse Effects

- **In consultation, agency applies criteria of adverse effects to determine if undertaking will cause adverse effects on historic properties**
 - Adverse effect: alteration of any of the characteristics of a historic property qualifying it for inclusion in the National Register
 - Effects can be direct (physical damage) or indirect (visual or audible)
- **If agency finds undertaking will have no adverse effects, it must notify and provide documentation to consulting parties**
 - If SHPO/THPO or other consulting party disagrees, federal agency must consult with the disagreeing party or ask the ACHP to review the finding and provide its own opinion
 - Finding of no adverse effects can be based on (1) no actual adverse effects, or (2) no effects once conditions are imposed to modify the undertaking
- **If agency finds undertaking will have adverse effects, ACHP is notified and consultation continues to resolve adverse effects**

Step 4: Resolving Adverse Effects

- **In consultation with the parties, agency develops and evaluates alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects**
- **Agency, SHPO/THPO, and sometimes the ACHP, execute a memorandum of agreement (MOA) dictating how adverse effects will be resolved**
 - Agency official invites project proponent, and sometimes others, like tribes, to sign the MOA (a binding and enforceable contact)
 - Once executed, MOA evidences agency's compliance with section 106 and governs the undertaking

Typical Treatment: Data Recovery on Archaeological Sites; Recordation of Historic Structures



THE SECTION 106 PROCESS

Historical Preservation Consultation for Federal Agencies and License Applicants

Section 106 Flow Chart

The following is a schematic diagram of the principal procedures in the Section 106 process of consultation for federal undertakings. This process is described as provided in the rules adopted by the Advisory Council on Historic Preservation, effective January 11, 2001, found at 36 CFR Part 800.

All code references are to sections in 36 CFR Part 800 unless noted.

Abbreviations

ACHP Advisory Council on Historic Preservation
 APE Area of Potential Effects
 AO Agency Official
 EA Environmental Assessment
 FCC Federal Communication Commission
 FPO Federal Preservation Officer
 HP Historic Property
 MOA Memorandum of Agreement
 NHO Native Hawaiian Organization
 SHPO State Historic Preservation Officer
 THPO Tribal Historic Preservation Officer

I. Initiating the Process

Establish Undertaking

Initially, the Agency Official (AO) must establish whether proposed action is an "undertaking," defined as a project, activity, or program funded by a federal agency, including those requiring a federal permit, license or approval.

Sec. 800.3(a)(i),
Sec. 800.16(y)

Assess Potential for Effect on HPs

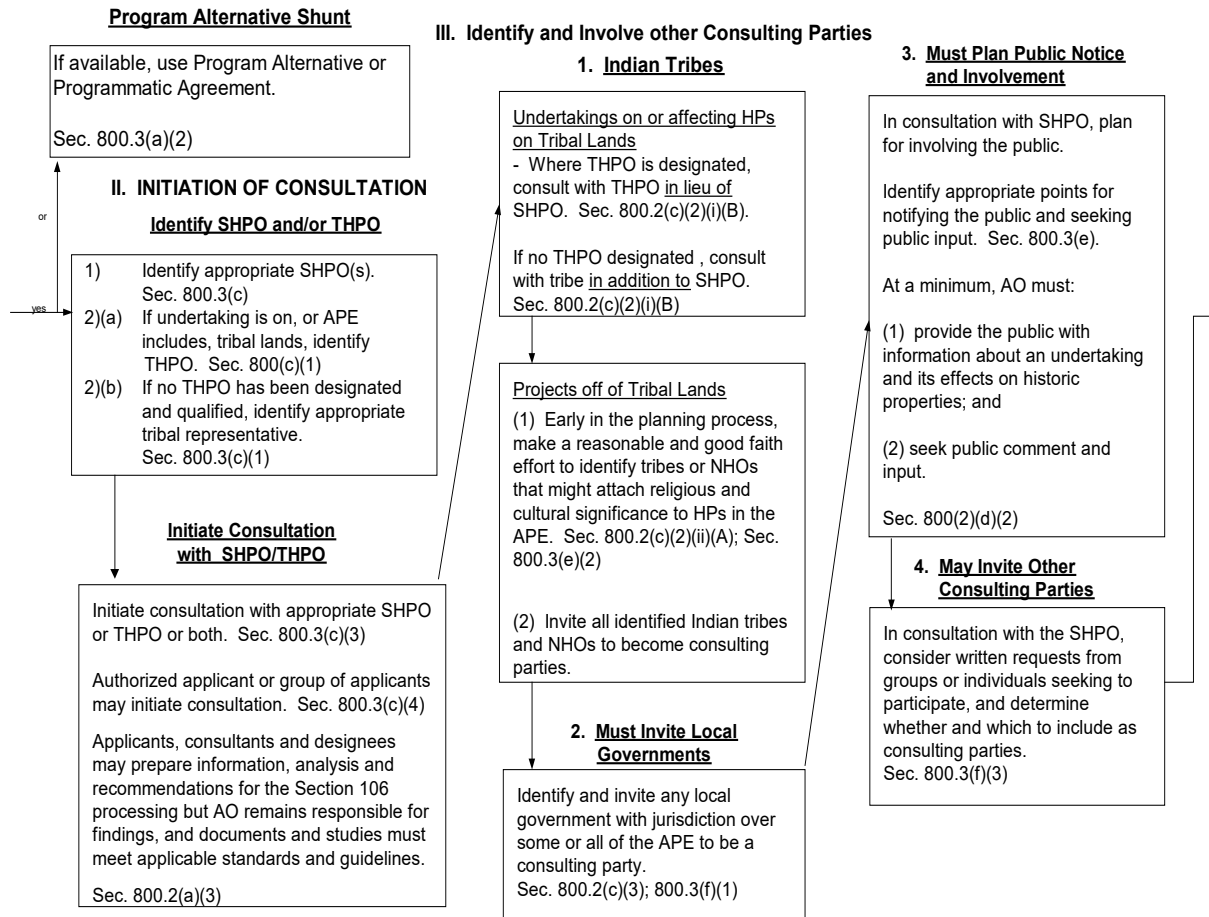
Is the undertaking the type of activity that has the potential to cause effects on historic properties?

Sec. 800.3(a)

Section 106 Process Concluded

AO has no further obligation under Section 106 of the Historic Preservation Act, or ACHP rules.

Sec. 800.3(a)(1)



IV. Identification of Historic Properties

Required Preliminary Steps

Determine APE

In consultation with SHPO, determine and document APE.
Sec. 800.4(a)

Gather Background Information

1. Review existing information on historic properties within APE, including data on possible HPs not yet identified.
2. (a) Seek information, as appropriate, from consulting parties and others likely to have knowledge of, or concerns with, historic properties in the area; and

(b) Identify issues relating to the undertaking's potential effects on HPs; and
3. Gather information from any identified Indian tribe or NHO to assist in identifying properties located off of tribal lands, which: (1) may be of religious and cultural significance to them; and (2) may be eligible for the National Register. Sec. 800.4(a)(4) and 800.11(c)

Identification - Degree of Effort Required

Based on the information gathered under the above-listed preliminary steps, make a reasonable and good faith effort to carry out "appropriate identification efforts."
Sec. 800.4(b)(1)

Appropriate identification efforts may include:

- 1) Research;
- 2) Consultation;
- 3) Oral history interviews; or
- 4) Field surveys

In this regard, the AO shall take into account:

- 1) Past planning, research and studies;
- 2) Magnitude and nature of undertaking
- 3) Degree of federal involvement
- 4) Nature and extent of potential effects on HPs;
- 5) Likely nature and location of HPs in APE.

Guidance is available from the Secretary's Standards and Guidelines for Identification. AOs should also consider other applicable professional, state, tribal, and local laws, standards and guidelines. Secs. 800.4(b) and (b)(1)

V. Evaluation of Historic Significance

Apply the National Register Criteria

In consultation with SHPO and any consulting tribe or NHO, and guided by the Secretary's Standards and Guidelines for Evaluation, apply the National Register Criteria for Evaluation to properties within the APE that either:

(1) have not been previously evaluated for National Register eligibility; or

(2) have previously been determined eligible or ineligible, but require reevaluation due to the passage of time, changing perceptions of significance, or incomplete prior evaluations. Sec. 800.4(c)(1)

Determine Potential Eligibility

Applying the National Register Criteria, determine whether any properties in the APE meet the National Register Criteria. Sec. 800.4(c)(2)

Results of Identification and Evaluation

No Eligible HPs Affected

AO finds and SHPO/THPO agrees there are no listed or eligible properties in APE. Sec. 800.4(c)(2)

No

No Agreement on Eligibility

AO and SHPO/THPO disagree as to the eligibility of properties in APE. Sec. 800.4(c)(2)

?

Yes, Eligible Properties Affected

AO finds, and SHPO agrees, that there are eligible or listed properties in APE. Sec. 800.4(e)(2)

Yes

ACHP or Secretary of the Interior may request a determination. Sec. 800.4(c)(2)

Secretary Determines Eligibility

Obtain a determination of eligibility from the Secretary of the Interior. Sec. 800.4(c)(2); 36 CFR Part 63

Proceed to Notification

Sec. 106 process concluded?

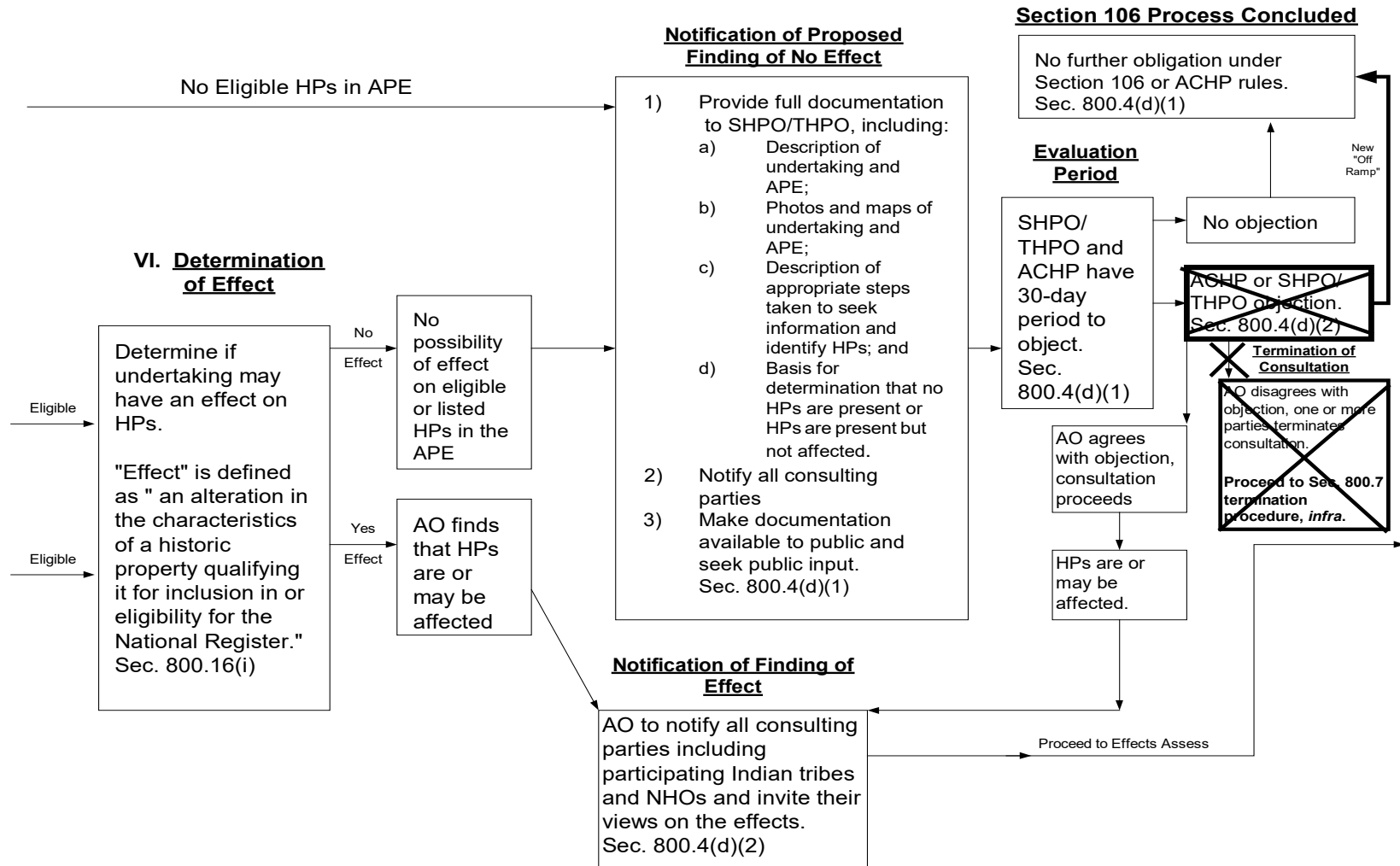
Secretary says Not Eligible.

No

Secretary says Eligible.

Yes

Proceed to Determination of Effect.



Assess Effects

In consultation with SHPO/THPO, and/or participating Indian tribes and NHOs, assess effects using Criteria of Adverse Effects. Sec. 800.5(a)

Effect Found

Criteria of Adverse Effects

"An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials workmanship, feeling, or association." Sec. 800.5(a)(1).

Find No Adverse Effect

Find Adverse Effect

Proposed Finding of No Adverse Effect

In consultation with THPO/THPO, propose a finding of No Adverse Effect if:

- 1) Effect not adverse, or
- 2) Adverse effect avoided by modifying or imposing conditions on undertaking. Sec. 800.5(b)

Notification and Documentation

- 1) Notify SHPO/THPO and all consulting parties
 - 2) Provide SHPO/THPO and all consulting parties with full documentation of finding including:
 - a. Description of the undertaking, federal involvement and APE, including photos, maps and drawings, as necessary;
 - b. Description of steps taken to identify HPs;
 - c. Description of HPs and characteristics that qualify them for National Register;
 - d. Description of effects on HPs;
 - e. Explanation of why criteria of adverse effects found applicable or inapplicable, including conditions to avoid, minimize or mitigate adverse effects; and
 - f. Copies or summaries of views from consulting parties or public.
- Secs. 800.5(e) and 800.11(e)

SHPO/THPO Receipt of Documentation Triggers

30 Day Waiting Period

Tribal Concurrence

AO should seek the concurrence of any participating Indian tribe or NHO that has communicated that it attaches significance to any HPs subject to the finding. Sec. 800.5(c)(2)(ii)

Within 30 day waiting period, Indian tribe or NHO may specify its reasons for disagreeing and request ACHP to review. Sec. 800.5(c)(2)(ii)

SHPO/THPO has 30 days from receipt of documentation to review finding of No Adverse Effect. Sec. 800.5(3)(2)

SHPO/THPO agrees - No Adverse Effect, or doesn't respond within 30 days. Sec. 700,5(c)(1)

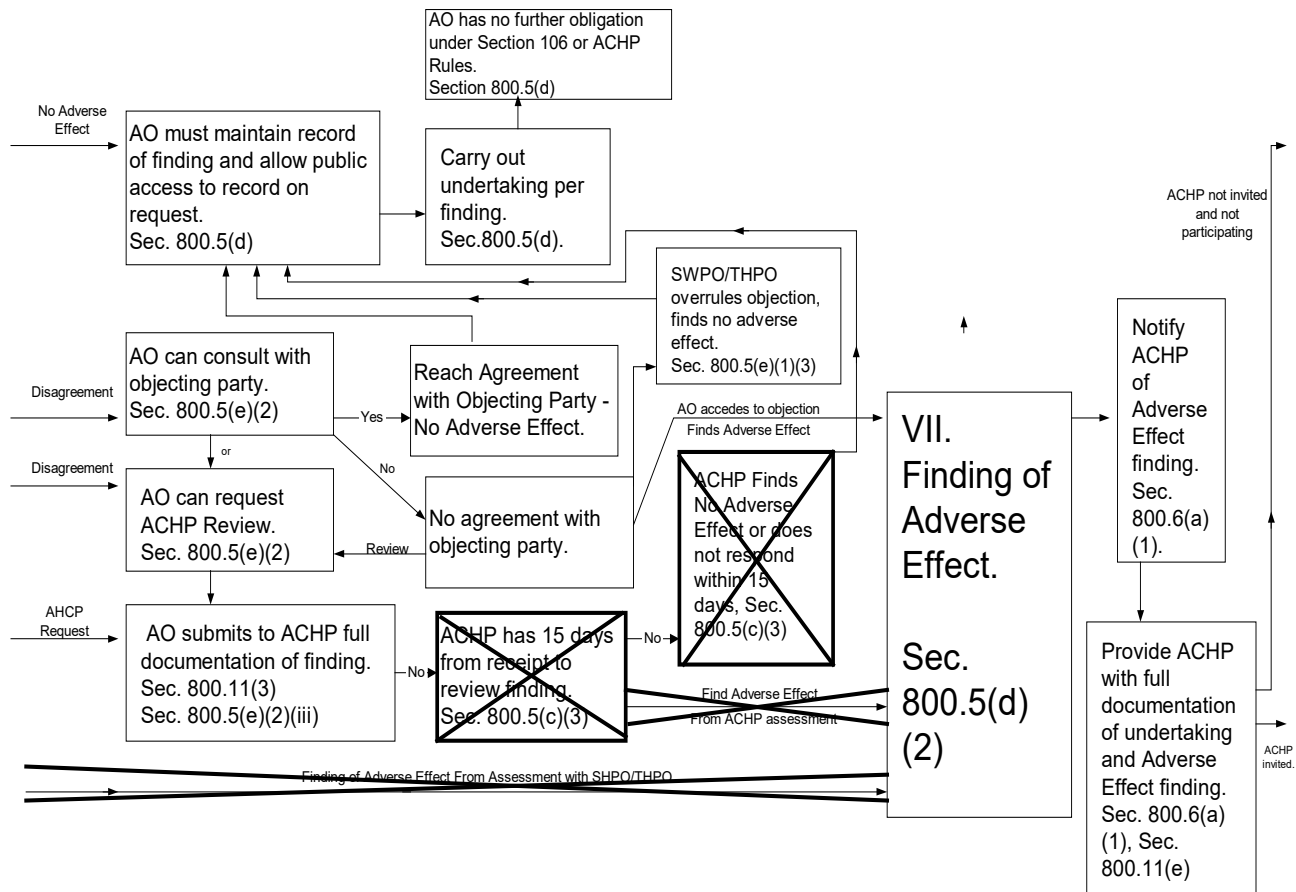
SHPO/THPO or any consulting party disagrees with finding of No Adverse Effect, specifying reasons. Sec. 800.5(c)(2)

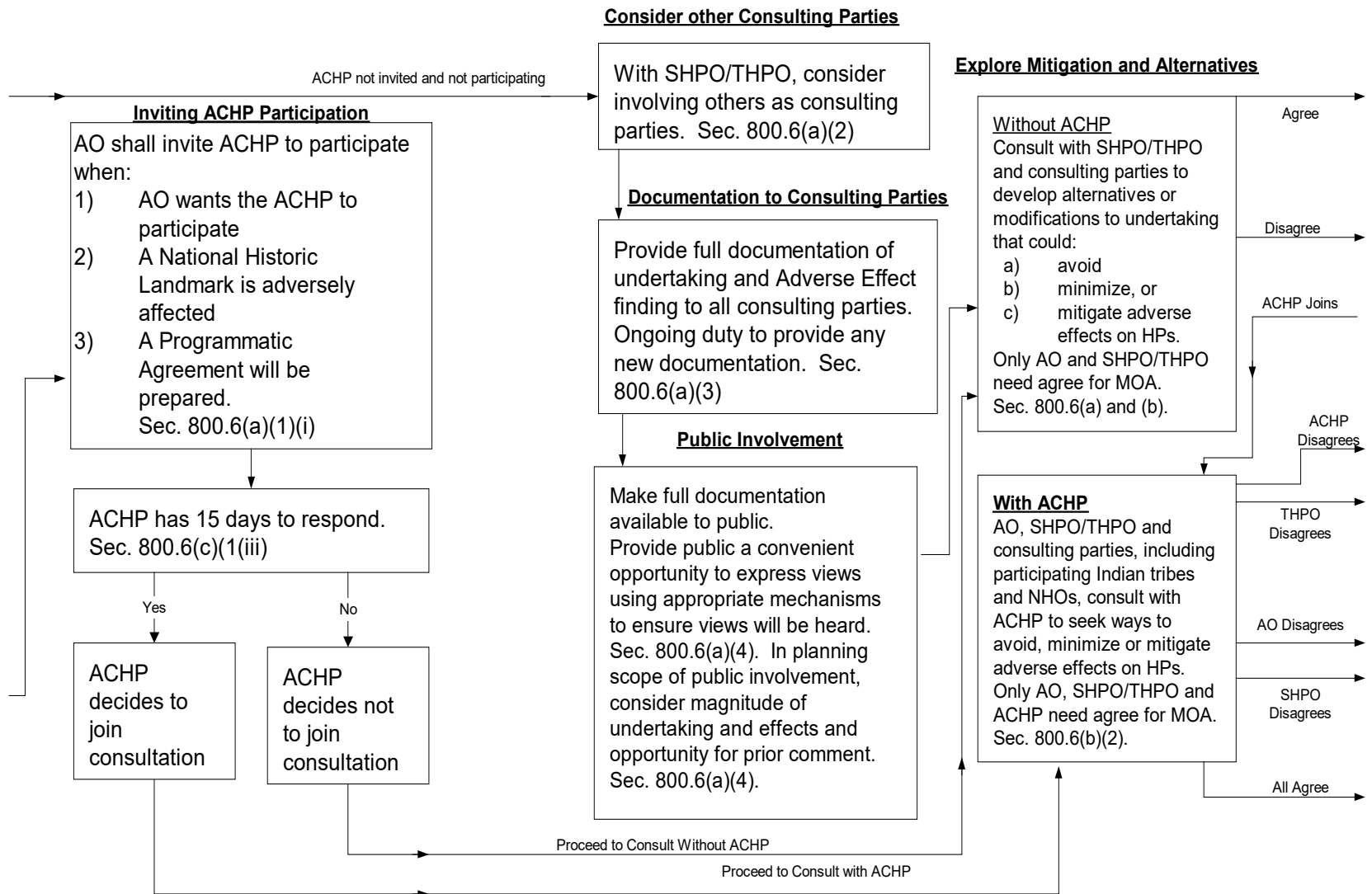
ACHP may request to review finding. Sec. 800.5(b)(2)(iii)

ACHP Intervenes

Proceed to VII. - Finding of Adverse Effect

Section 106 Process Concluded

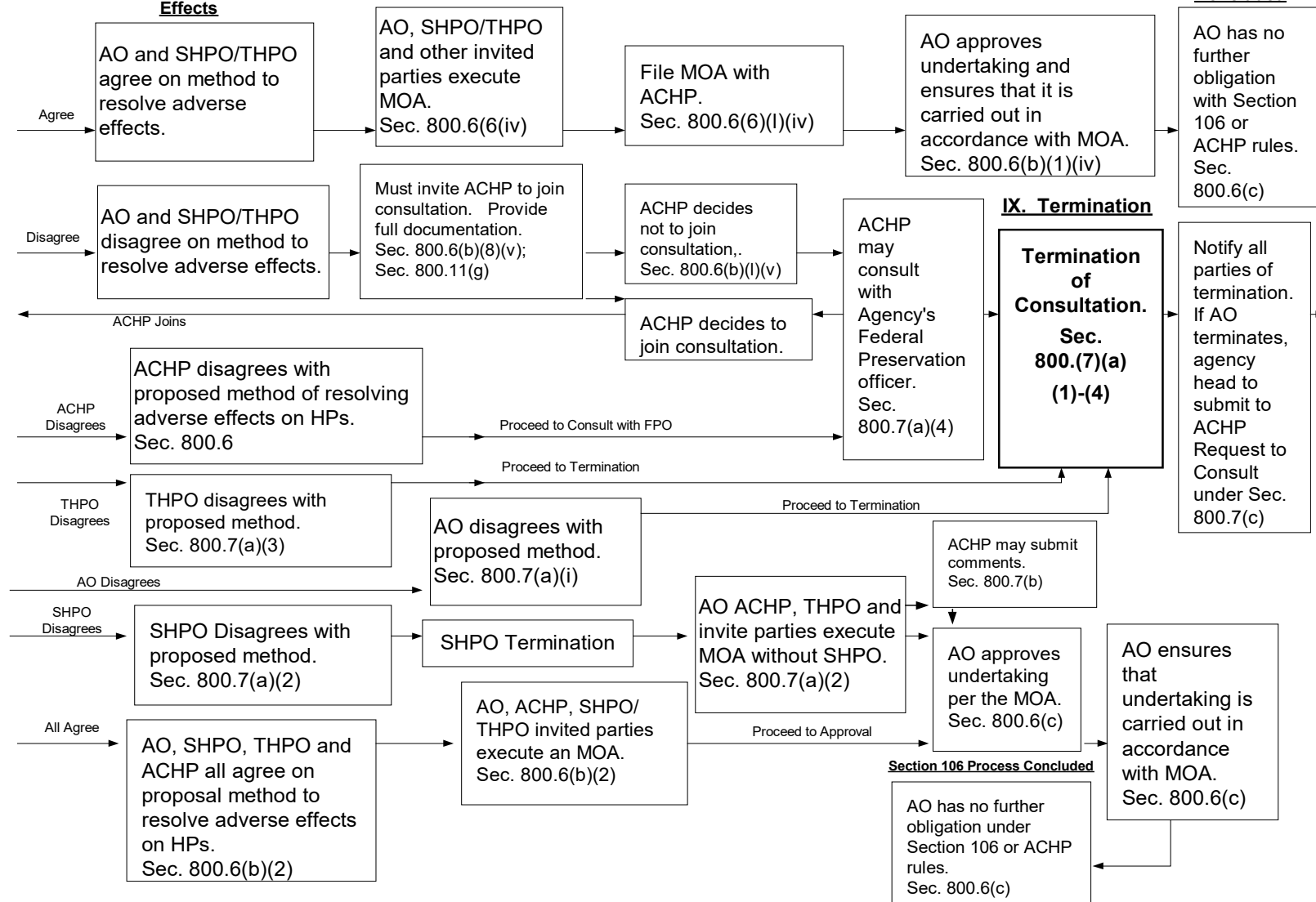




Negotiate Proposed Methods to Resolve Effects

VIII. MEMORANDUM OF AGREEMENT STAGE

Section 106 Process Concluded



IX. Section 800.7(c) Comment Procedure ACHP

Within 45 days of either: (1) receipt of request from head of agency or (2) date of termination of consultation (AO can agree to extend time):

- 1) Council must provide opportunity for AO, all consulting parties, and the public to provide their views.
- 2) AO must:
 - A) Provide additional existing information regarding undertaking; and
 - B) Assist the ACHP in arranging:
 - i) on site inspection; and
 - ii) an opportunity for public participation.

Sec. 800.7(c)(1), (2)

Transmittal of ACHP Comments

ACHP transmits its comments to:

- 1) Federal Preservation Officer (FPO);
- 2) All consulting parties;
- 3) Head of Agency;
- 4) AO; and
- 5) Others as appropriate.

Sec. 800.7(c)(3)

XI. Documenting the Agency's Decision

Head of Agency must personally (may not delegate) take into account ACHP comments and document any final decision.

Documenting means:

- 1) Preparing a summary of decision and rationale;
- 2) Including evidence of consideration of ACHP comments;
- 3) Providing ACHP a copy prior to approving undertaking;
- 4) Providing a copy to all consulting parties; and
- 5) Notifying public and making record available.

Sec. 800.7(c)(4)

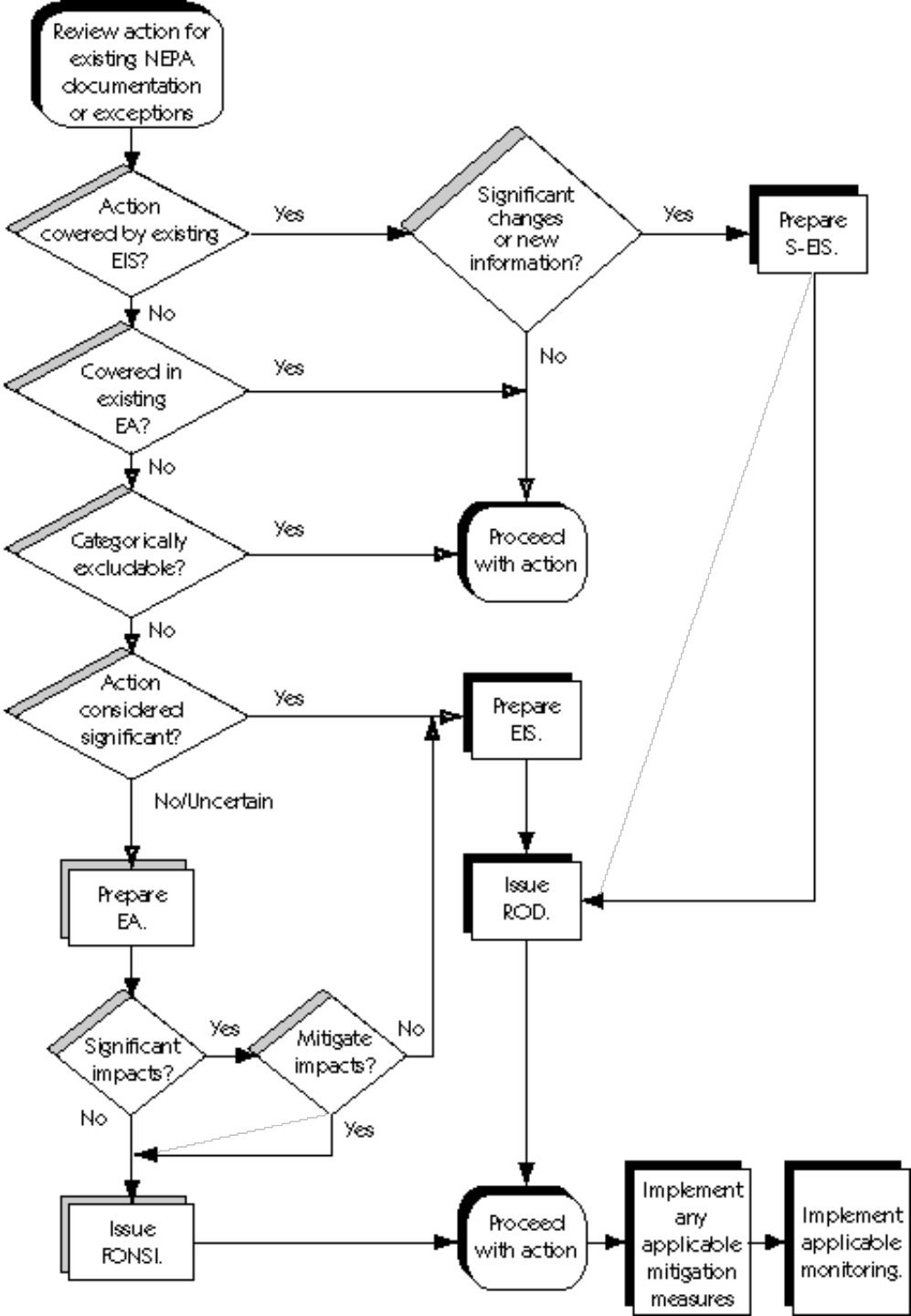
XII. Final Decision

Agency may approve or deny the undertaking.

Other Authorities For Consultation/Coordination



The Typical NEPA Process



What level of consultation is required?

“Reasonable and good faith effort”



Balance Environmental Regulation With Other National Policy Priorities



President Obama in Cushing, OK – March 22, 2012

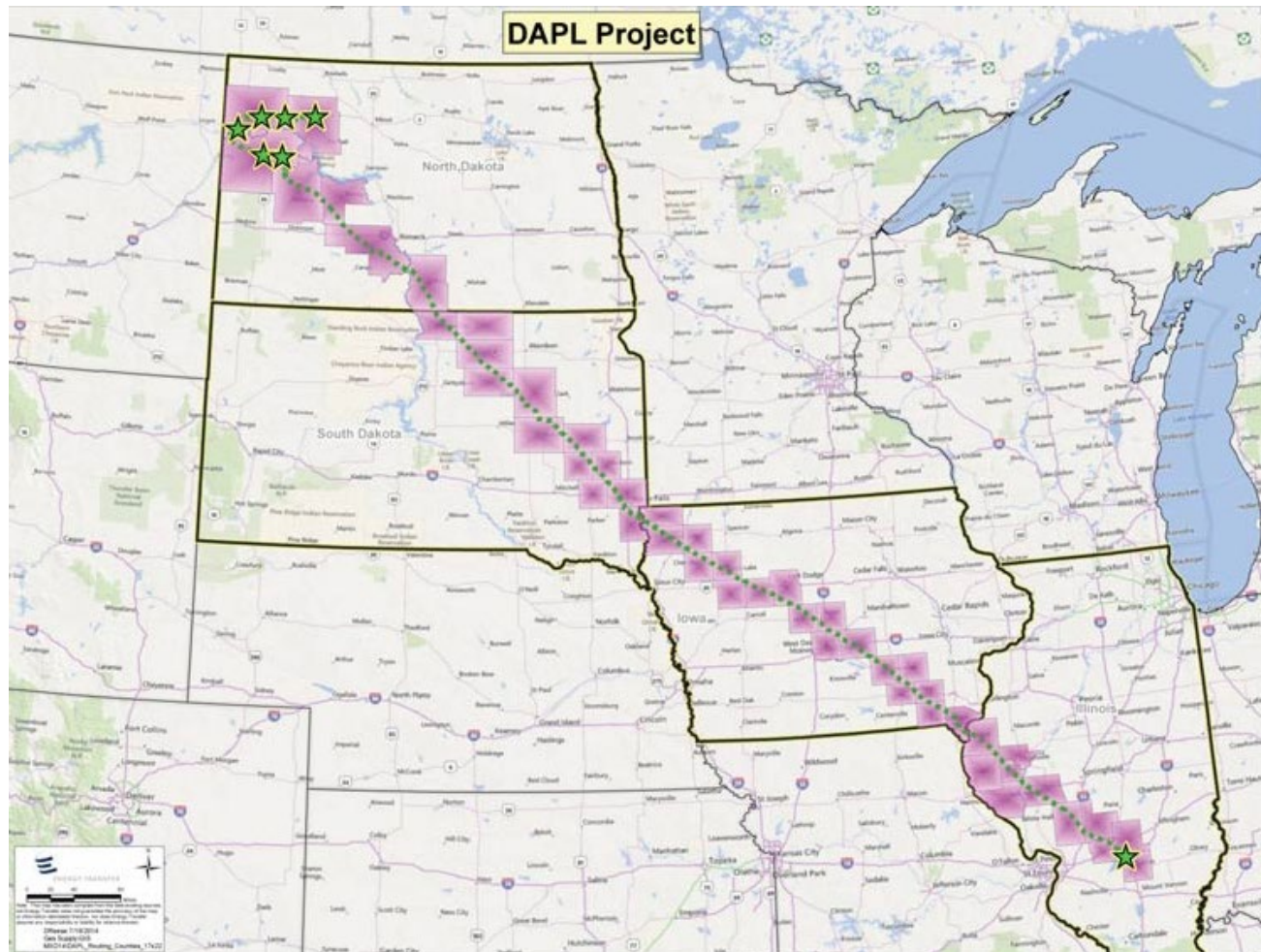
#NoDAPL



WHAT IS DAPL?

- **1,172-mile, 30-inch underground pipeline designed to transport crude oil from the Bakken Region of North Dakota through South Dakota, Iowa, and Illinois to major U.S. refining centers.**
- **The pipeline is located almost entirely on private land; federal jurisdiction applies to only 3 percent of the project.**

INDIAN TRIBES AND OFF-RESERVATION ENERGY INFRASTRUCTURE



Army Corps Hook for DAPL

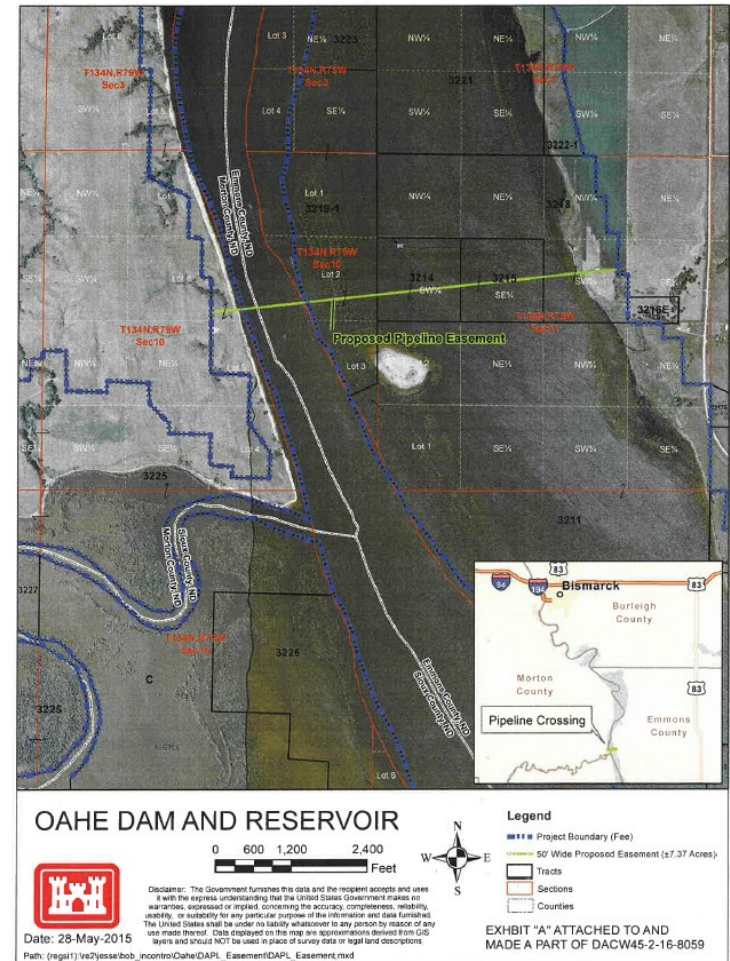
- The only federal hook for DAPL is the Army Corps of Engineers' permitting authority under § 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act for crossings of waters of the United States (streams, rivers, wetlands), including navigable rivers such as the Missouri River, Des Moines River, Mississippi River, and the Illinois River.
- The Corps' Omaha District evaluates permit requests in North Dakota and South Dakota. The Corps' Rock Island District evaluates permit requests in Iowa. The Rock Island and St. Louis Districts share permit evaluation authority in portions of Illinois. It is the actions of the Corps' Omaha District that are at issue in the litigation in the DC Circuit. The Army Corps' decision processes must comply with other federal environmental laws, including the NHPA, which plaintiffs allege was violated because inadequate process and response time was afforded to the tribes.



DAPL: WHAT HAPPENED?

In July 2016, U.S. Army Corps of Engineers (USACE) released an Environmental Assessment (EA) under the National Environmental Policy Act that evaluated a proposed Section 408 permit to allow DAPL to cross Lake Oahe, a reservoir on the Missouri River.

USACE issued the 408 permit (named for Section 408 of the Rivers and Harbor Act) but continued to consider the requisite right-of-way across federal land under the Mineral Leasing Act.



DAPL: WHAT HAPPENED?

Pipeline route had shifted during the project from about 10 miles north of Bismarck, North Dakota, to within a half-mile of the Standing Rock Sioux Reservation, triggering controversy from that tribe and the Cheyenne River Sioux Tribe 70 miles downstream.

DAPL: WHAT HAPPENED?

DAPL proceeded with earthmoving on private land that the Standing Rock Sioux Tribe identified in court documents as a culturally sensitive area.

- Confrontation during initial protests eventually resulted in support from more than 200 other tribes.**
- Protest camps swelled to more than 10,000 people.**





DAPL: WHAT HAPPENED?

On Jan. 24, 2017, President Trump issued his “Presidential Memorandum Regarding Construction of the Dakota Access Pipeline.”

This Memo determines DAPL to be in the national interest and directs USACE to “review and approve in an expedited manner, to the extent permitted by law and as warranted.”



DAPL: WHAT HAPPENED?



The Litigation continues ...

- A U.S. court in 2022 ordered the federal government to undertake a more intensive environmental impact statement (EIS) of the 1,100-mile long crude pipeline's route, the latest saga in a lengthy court battle between the tribes and pipeline operator Energy Transfer.
- In a draft statement in September, the U.S. Army Corps of Engineers did not select a preferred alternative of five options, including abandoning or rerouting the pipeline around Lake Oahe, a federally protected reservoir.
- It will make its selection only after public and agency comments were received and a final version prepared, the draft report said.
- Energy Transfer said yesterday that it does not expect the U.S. Army Corps of Engineers to shut down or reroute DAPL

Comparison to Ruby Pipeline Project

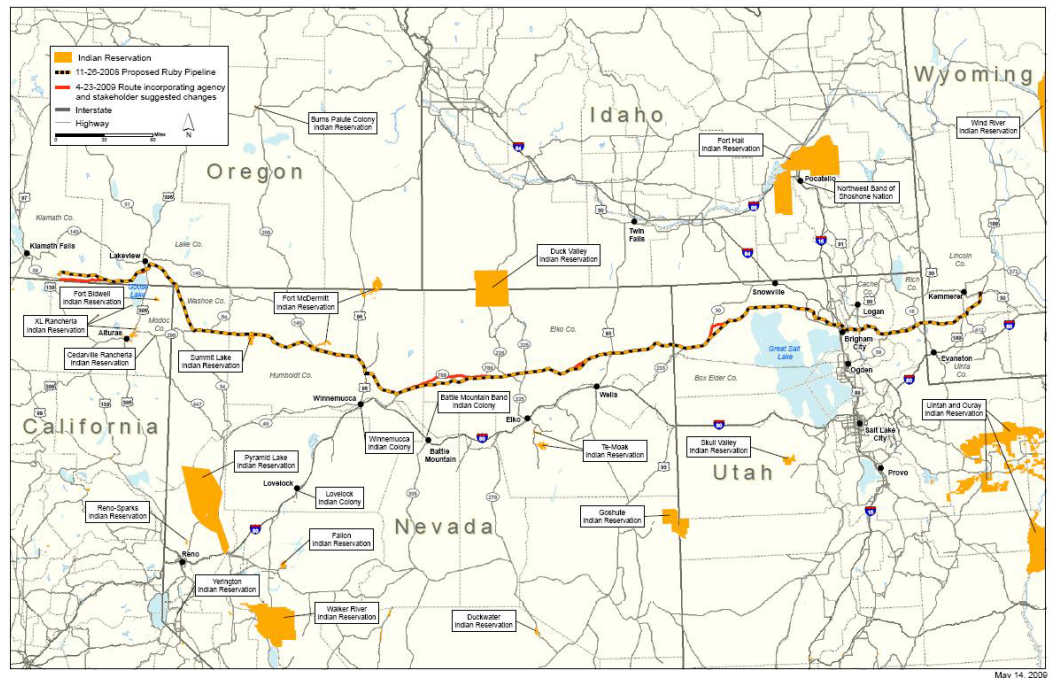
680 miles of 42-inch Pipe - Opal, WY to Malin, OR

Links Rocky Mountain Gas w/ Western US Markets

65% on public lands

44 Tribes within connections to lands

Substantial Tribal input at every phase





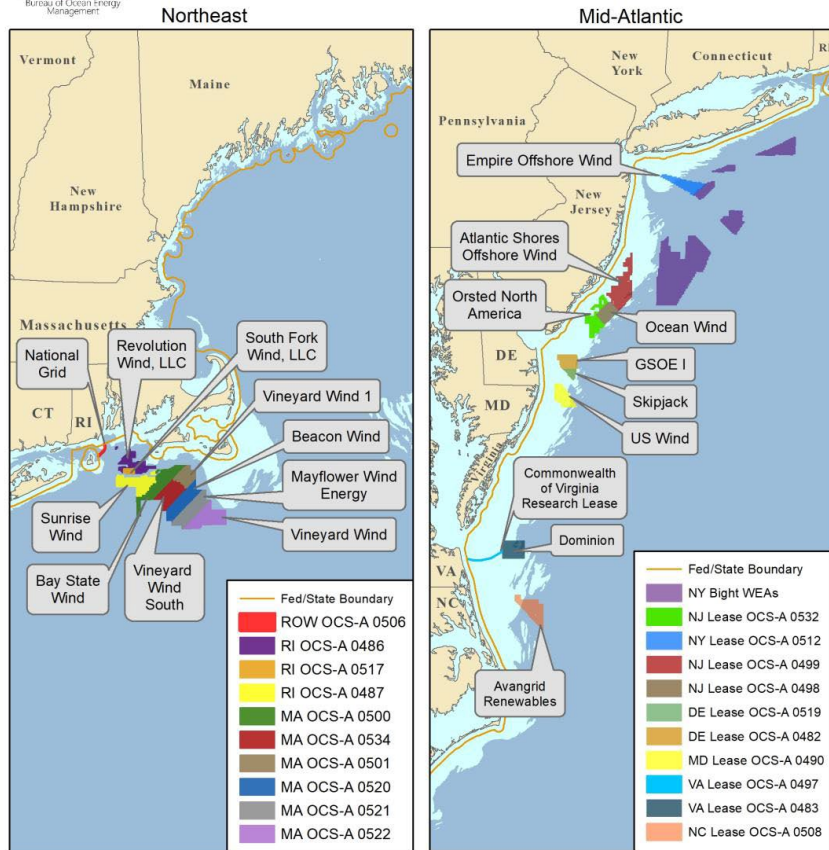
A lot of process to navigate, 100+ Tribal Monitors worked on Ruby; Confidential Mitigation Side Agreements



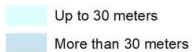
Compare to Current Offshore Wind Development



Atlantic OCS Renewable Energy - Massachusetts to South Carolina



Bathymetry



62 turbines spaced about a mile apart and rising more than 800 feet out of the water.

The logo represents the legend of Moshup, the Wampanoag Great Leader who could transform himself into a giant and led the people to Noepe, and fed them by wading out into the ocean and catching North Atlantic Right Whales, hitting them against the Cliffs to prepare them for cooking and their blood is what provides for the red colors of their Sacred Cliffs.





In NPS designation letter it states that the “boundaries” of the eligible area are “undefined;” it should have triggered far more consideration and protections for all of the shallow waters, which all contain submerged archeological cultural resources including burials; all the way out to the continental shelf break. This is where the color chart maps show the water depth going from 90’ to about 200’ deep at the break/drop. It was all dry land, and Wampanoag lived all the way out to the break/drop.



United States Department of the Interior

NATIONAL PARK SERVICE
1949 C Street, N.W.
Washington, D.C. 20240

DETERMINATION OF ELIGIBILITY NOTIFICATION

National Register of Historic Places
National Park Service

Name of Property: Nantucket Sound

Location: Nantucket Sound

State: Massachusetts

Request submitted by: Christopher E. Horrell, MMS Federal Preservation Officer, 1201 Elmwood Park Blvd., New Orleans, LA 70123

Date received: 11/18/09

Additional information received

Opinion of the State Historic Preservation Officer:

☒ Eligible

☐ Not Eligible

☐ No Response

☐ Need More Information

Comments:

The Keeper of the National Register of Historic Places has determined that this property is:

☒ Eligible

In addition to submerged burials ...

- Surrounded by turbines, tribes in New England assert that BOEM has failed to properly assess the individual and cumulative effects of 1000+ of wind turbines with respect to migratory patterns, siltation, bathometrics, photosynthesis, noise, increased marine traffic and increased temperature of the shallow waters due to 1000+ metal heat conducting monoliths, and the fact that none of their visual simulations are even close.

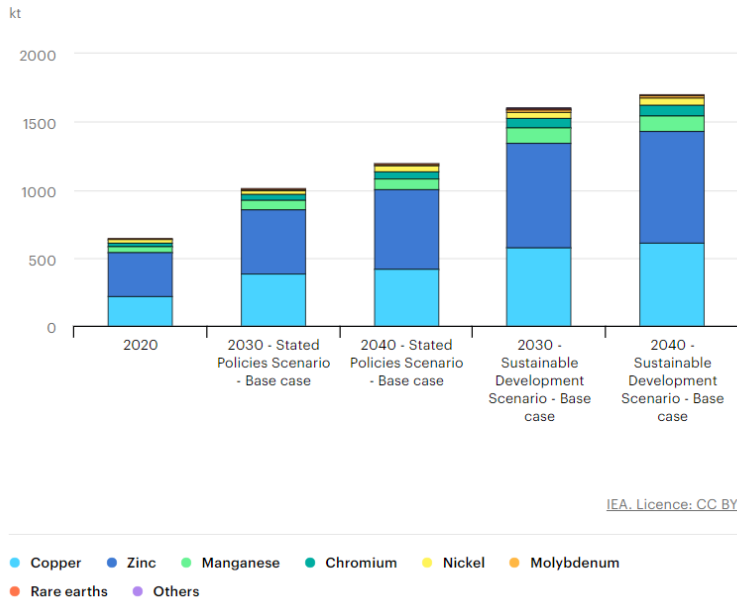
Wind farm off New Jersey likely to 'adversely affect' but not kill whales, feds say



Wind turbines require concrete, steel, iron, fiberglass, polymers, aluminium, copper, zinc and REEs. Mineral intensities not only depend on the turbine size, but also on the turbine type.

Overall mineral demand from wind in the base case by scenario, 2020-2040

Open



Copper: Sulfuric Acid is used for leaching of copper from oxide ore, and some sulfide ores. The leaching solution is claimed to be diluted and recycled. However, it is recycled into lined ponds of high toxic levels of sulfuric acid.

Demand for REEs in wind – neodymium and praseodymium in particular – is set to more than triple by 2040, driven by the doubling of annual capacity additions and a shift towards turbines with permanent magnets. **Copper demand reaches 600 kt per year in 2040, propelled by offshore wind requiring greater cabling. Offshore wind accounts for nearly 40% of copper demand from wind despite accounting for only 20% of total wind capacity additions.**

677,000 acre feet of water to be consumed by the company's own estimates, which will come from the complete dewatering of the site and ginormous withdrawals of raw groundwater from the East Salt River Basin, which is the primary backup drinking water for Phoenix in the event of Colorado River scarcity (i.e., NOW). Resolution Copper can withdraw **UNLIMITED** amounts of groundwater under antiquated Arizona mining extraction permits. Keep in mind 677,000 acre feet is the company's own (under)estimate and 1 acre foot of water supplies four homes for one year. This is a gargantuan consumption of water.

Will become the country's biggest Super Fund site ever, featuring a toxic pit to which all water will later run to, forming a poison lake and causing the ground in a 50-mile radius to collapse because the aquifers will collapse from the massive groundwater withdrawals, and this includes agriculture irrigation canals.

All the copper goes to China, which directly owns 15% of the project and will simply stockpile the copper.

Oak Flat



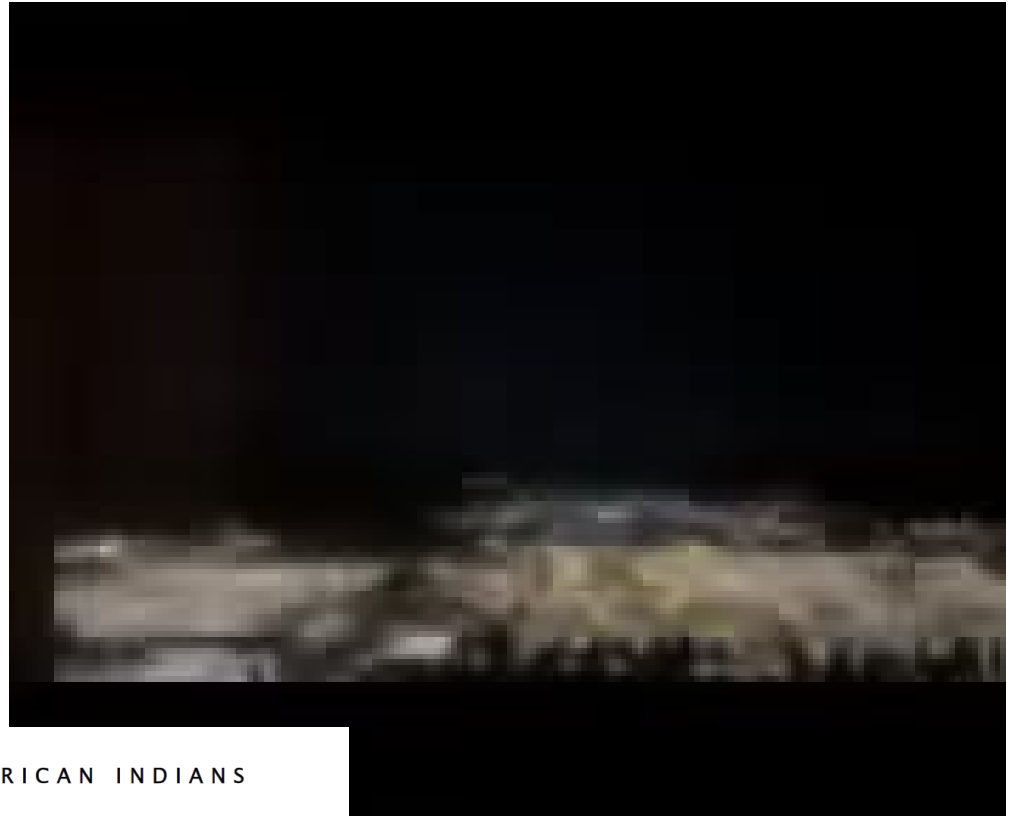
ISLAND IS SPECIAL,
SECRETARY UDALL
SAYS AT GAY HEAD

8/2/66
Sees Need of Program to
Conserve Resources
of Vineyard

By Peter S. McGhee

In a friendly but eloquent mixture of encouragement, advice and warning to the whole Island, Secretary of the Interior Stewart L. Udall formally dedicated the colorful clay cliffs of Gay Head as a National Landmark on Saturday afternoon.

"Don't build that bridge," he said, in reference to a proposal put forward recently by Boston's Automobile Legal Association; "It's a silly idea . . . keep the roads the way they are, don't let the highway engineers build you some high speed roads . . . preserve your historic places . . . keep the beautiful beaches and marshes unspoiled . . . and above all else . . . keep out the speculator-developer types."



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #ECWS-23-005

EXECUTIVE COMMITTEE

PRESIDENT
Fawn R. Sharp
Quinault Indian Nation

1ST VICE PRESIDENT
Mark Macarro
Pechanga Band of Luiseño Indians

RECORDING SECRETARY
Stephen Roe Lewis
Gila River Indian Community

TREASURER
Shannon Holsey
Stockbridge-Munsee Band of
Mohican Indians

REGIONAL VICE
PRESIDENTS

ALASKA
Mike Williams

TITLE: Offshore Wind Moratorium

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States and the United Nations Declaration on the Rights of Indigenous Peoples, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and





OCEAN JUSTICE STRATEGY

A REPORT BY THE OCEAN POLICY COMMITTEE

DECEMBER 2023



Internal docs show Biden admin waived taxpayer safeguards to boost offshore wind project

The [Bureau of Ocean Energy Management \(BOEM\)](#) informed Vineyard Wind that it had waived a financial assurance for decommissioning costs fee in a June 15, 2021 letter.

In its June 2021 letter to Vineyard Wind, BOEM explained it would waive the fee because the project included risk reduction factors including insurance policies to cover any catastrophic event that damages operations, use of proven wind turbine technology, and the use of power purchase agreements "with guaranteed electricity sales prices that, coupled with the consistent supply of wind energy, ensure a predictable income over the life of the project."



Osage Minerals Council v. Osage Wind (Enel)

- A federal judge in Oklahoma ordered removal of an 84-turbine wind farm spread across 8,400 acres in Osage County with a final ruling that ends a decade-long legal battle over illegal mining on the Osage Reservation.
- Cost for removal of the turbines is estimated at \$300 million.
- U.S. Court of International Trade Judge Jennifer Choe-Groves granted permanent injunctive relief via “ejectment of the wind turbine farm for continuing trespass.”
- Issue was whether a mining permit was required to construct the wind farm, located in tallgrass prairie between Pawhuska and Fairfax. The defendants began leasing surface rights from private landowners for the project in 2013, and construction on the wind towers began in October 2013, with excavation for the towers beginning in September 2014.
- A 2017 appellate court decision determined the construction of the wind farm constituted mining and therefore a lease from the Osage Nation’s Minerals Council was required.



Process is unsatisfying.



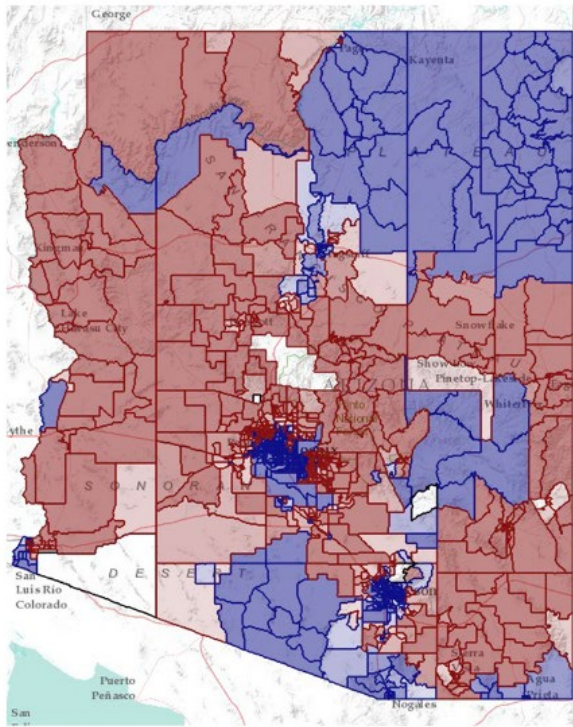
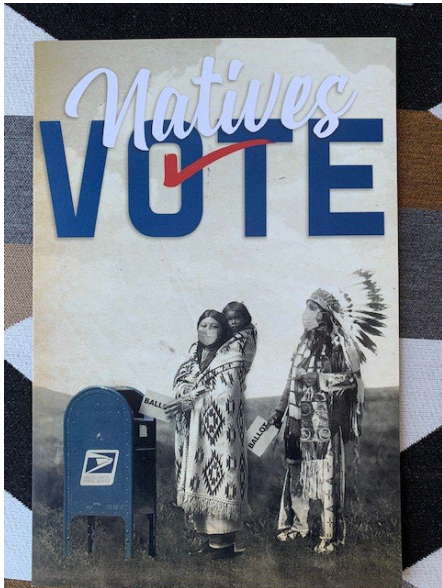
“Everyone has a plan until they get hit in the mouth.”

- Mike Tyson

**Financing is the mouth of extractive industry;
influencing the market via social and political
engagement, forcing risk analysis.**



Moving Beyond Process: Natives Vote, Territorial Sovereignty, Participation Across Government, Access to Capital



Map showing how different Arizona precincts voted in the 2020 Presidential election (left).
Map of tribal lands in Arizona (right).



Thank you!

Jennifer Weddle

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