

BLM's National Programmatic Agreement Questions and Answers

Why and when did BLM enter into a National Programmatic Agreement (NPA)?

The Advisory Council on Historic Preservation's implementing regulations (36 Code of Federal Regulations (CFR) Part 800 "Protection of Historic Properties") for compliance with Section 106 of the National Historic Preservation Act allows agencies to develop "program alternatives" delineating agency specific measures for the agency to comply with Section 106 as opposed to using the standard 36 CFR 800 regulatory process.

In 1997, BLM, in cooperation with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers chose to develop a program alternative via use of a nationwide programmatic agreement. BLM elected to pursue the program alternative to achieve efficiencies in cost and time for conducting routine Section 106 compliance activities.

Why did BLM revise its 1997 national NPA?

In 2008, BLM, ACHP, and NCSHPO entered into a process to review and update the national PA. One of the primary reasons for review and revision was due to amendments to the 36 CFR Part 800 regulations which occurred in 2004. Consequently, BLM undertook an assessment of the national NPA for its consistency with the 2004 amendments to the regulations.

What role did tribes have in the NPA revision process?

In August 2008, the BLM initiated an outreach to tribes by sending its policies, including the NPA to over 600 tribal leaders and asked for recommendations to improve our tribal consultation policies and/or procedures. The BLM continued the outreach with listening sessions hosted by BLM state directors between October 2008 and July 2009. In December 2009, the BLM prepared a draft revision strategy and published a notice of intent to revise the NPA.

The revision took over three years and was informed by government-to-government consultation with tribes and the public. The BLM released a draft revision in September 2010 and a final revision in December 2011. That revision was executed at the ACHP Quarterly Business Meeting in Washington, DC, on February 9, 2012.

This agreement restructured the BLM preservation program and authorized the development of protocols between BLM and SHPOs that outline specific measures for the protection of historic properties in eleven western states. The revised NPA makes some changes to the BLM's alternative process and will require review of existing BLM-SHPO protocols.

What did the BLM do with the information it received from Tribes at listening sessions, during government-to-government consultation, in responses to letters from Tribes and others?

The revised NPA responds to the results of government-to-government consultation and comments from tribes and others as described in detail in the Director's letter and attachments, posted on the BLM web site December 16, 2011. In addition to the key revisions in the NPA noted above, consultation and comments addressed policies and procedures that are outside the purview of the NPA. The new DOI tribal consultation policy and Secretarial Order will provide additional opportunities for the BLM to consider many of the other comments received during the BLM's tribal outreach and consultation process.

What BLM activities affect Native American communities?

The BLM is responsible for managing approximately 255 million acres of public land, located mostly in the American West and Alaska, and about 700 million acres of subsurface mineral estate nationwide. The agency mission is to manage these lands with the goal of multiple use and sustained yield. Tribal lands can be involved in commercial uses (oil and gas drilling, mining, grazing, and forest management), recreational opportunities, and historic preservation requirements. These activities may also affect properties of religious and cultural significance to tribes, on or off tribal lands.

What guidance does the BLM follow to carry out its tribal consultation requirements under NHPA?

The BLM Manual Section 8120, "Tribal Consultation under Cultural Resource Authorities," provides basic policy direction on the Bureau's responsibilities under cultural resource-related laws and executive orders to address cultural, historical, and religious concerns of Native Americans. Handbook H-8120-1, "Guidelines for Conducting Tribal Consultation," assists the BLM managers and staff in carrying out assigned tribal consultation responsibilities and roles. The Department of the Interior's (DOI) December 2011 tribal consultation policy requires each bureau within the DOI to review its existing policies and make necessary revisions to bring them into conformance with the DOI policy. The BLM is just beginning that assessment process.

Will the revised NPA require that BLM-State protocols be revised?

Under the revised PA, BLM State Offices that maintain BLM-SHPO protocols will review them within 12 months to determine whether they meet the minimum requirements of the revised NPA. The ACHP will then be notified of the results. If the BLM determines that the BLM-SHPO protocol requires revision, any revision that alter the compliance process specified in the NPA or is more than 10 years older than the NPA is subject to consultation requirements as set forth in 36 CFR Part 800.14.

Are the BLM-Tribal Relations requirements under the NPA consistent with the new DOI tribal consultation policy?

The actions required by the BLM-Tribal Relations in Section 6 c of the revised NPA support the core principles of the new DOI tribal consultation policy. That DOI policy directs government decision makers to seek to establish ongoing relationships on which to carry out tribal consultation on specific projects. The revised NPA requires that the BLM state directors, in consultation with other State Directors, as appropriate, begin contacting Tribes within 12 months of the agreement's execution to initiate a discussion about ways to improve communication. The discussion should seek to identify areas of concern, answer questions on the existing BLM-SHPO protocol, establish a point of contact for Tribes, and develop a process for making information on pending actions available.