

At this point we're going to look at how BLM should follow the Section 106 process as laid out in the Solar PA.

Kathy, how does this differ from the standard Section 106 regulations?

The steps for the specific Section 106 procedures under the Solar PA are found in Stipulation 4 on pages 9 and 10 of the Agreement.

These include inventory, eligibility, effect, and treatment or mitigation of property.

I will go through the following slides fairly quickly, as the specifics can be found in the Solar PA itself.

Inventory is the first step in the process.

The BLM begins by determining the Area of Potential Effect (APE) for the project.

Input on the APE will be sought from the SHPOs, tribes and other consulting parties which should also include the public.

A complete class III of the APE will normally be required and the BLM can move forward with the inventory without further consultation. This will expedite the amount of time needed to determine the inventory requirements.

If the BLM determines that less than a Class III is reasonable, the BLM will consult with the SHPO, tribes and other consulting parties to develop an inventory strategy. This could include a combination of methodologies.

Following inventory, the BLM next conducts Determinations of National Register Eligibility.

If the individual state's protocol does not provide for a different or more streamlined process, then the 36 CFR Part 800 regulations are followed:

During the required pre-application meetings, or other consultations, the BLM will ask tribes if they wish to be consulted about eligibility on specific property types.

There may be property types identified by tribes that the BLM would normally conclude were not eligible for nomination to the National Register of Historic Places.

Tribal input early in the process can lead to a broader understanding of the significance of the property types and can avoid potential misunderstandings further along in the Section 106 process.

Once the inventory and determination of eligibility to the National Register has been completed, the next step in the process is the determination of effect on those properties that may have eligibility:

The next several slides will illustrate the process for determining if historic properties are affected, if there are adverse effects, and how to avoid or minimize impacts to these properties:

The BLM will work with the consulting parties and others, including tribes, to determine if listed or eligible properties may be affected by the proposed project.

If the BLM determines no historic properties are affected, this will be documented through the state protocol processes or the 36 CFR Part 800 regulations.

Once it is determined that historic properties MAY be affected, the BLM will apply the “Criteria of Adverse Effect”

As defined at 36 CFR 800.5, an adverse effect is found when an undertaking may alter, directly or indirectly, any characteristic of a historic property that qualifies for inclusion in the National Register of Historic Places.

If there is a finding of No Adverse Effect, the BLM will document and proceed with the undertaking per the state protocol or 36 CFR 800.5.

If any SHPOs, Indian tribes, or a Consulting Party objects to BLM’s finding of no affect or no adverse effect to historic properties, the BLM will follow procedures set forth in Stipulation 5.D of the Solar PA to resolve the dispute.

This process is discussed more fully later in the training.

When working on projects the size of utility-scale solar development, it is difficult, if not impossible, to avoid all historic properties that may be identified during the inventory phase.

The Solar PA acknowledges this. Borrowing language from the National Programmatic Agreement, it states that the BLM will avoid or minimize adverse effects to historic properties, “to the most reasonable and fitting extent.”

The BLM’s preference will ALWAYS be to seek opportunities to avoid adverse effects and will seek to achieve this through project design, physical and administrative protection measures, treatment steps, monitoring, and other conditions required of the applicant.

The BLM recognizes that treatment or mitigation cannot always eliminate adverse effects, especially for properties of a sacred or religious nature, or those that include traditional use areas or trails.

The BLM commits to develop treatment measures in consultation with the SHPO, Consulting parties, and tribes, to keep adverse effects to a minimum.

Once consultation on the treatment of adverse effects has been completed, the BLM will document the agreements for treatment in a Memorandum of Agreement, or MOA, executed with the respective SHPO.

As stated earlier, the BLM does not anticipate developing additional Programmatic Agreements for these types of projects. The BLM will use MOAs as the preferred instrument for documenting the treatment plans for solar projects.

The BLM will file a copy of the MOA with the Advisory Council even when they are not participating, and this will conclude the Section 106 process.

The Solar PA also identifies steps to take should tribes or a consulting party object to the terms of an MOA.

These processes can be found in Stipulation 5 of the Solar PA, and includes inviting the Advisory Council to participate.

The Advisory Council will assist the BLM and the SHPO in the development and execution of an MOA where disagreement has occurred.

If parties are still unable to come to agreement over the terms of the MOA, the BLM will follow Stipulation 5.D of the Solar PA.

This stipulation is discussed later in the training.