

# 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**

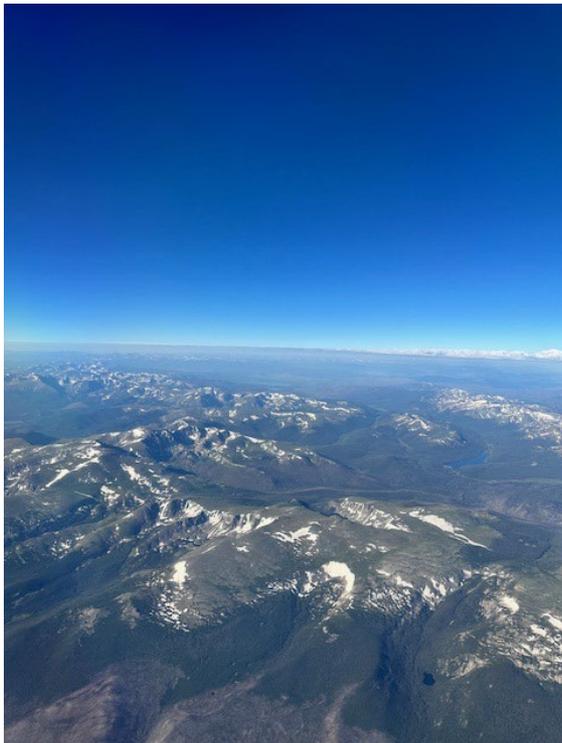
# Discussion Topics



- **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



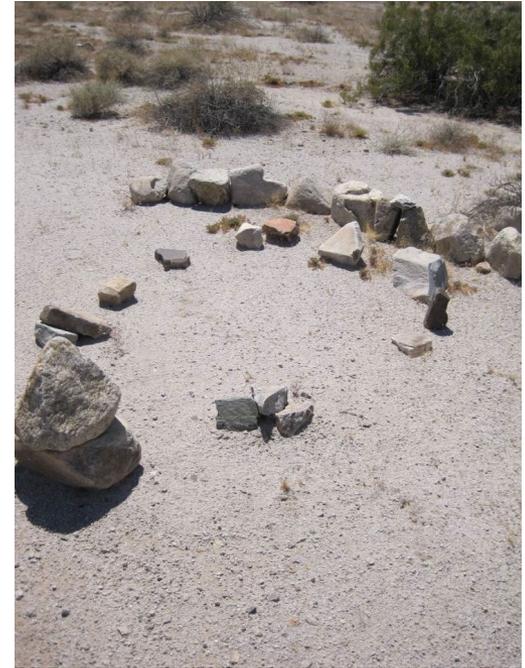
# What is an undertaking?

- **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**

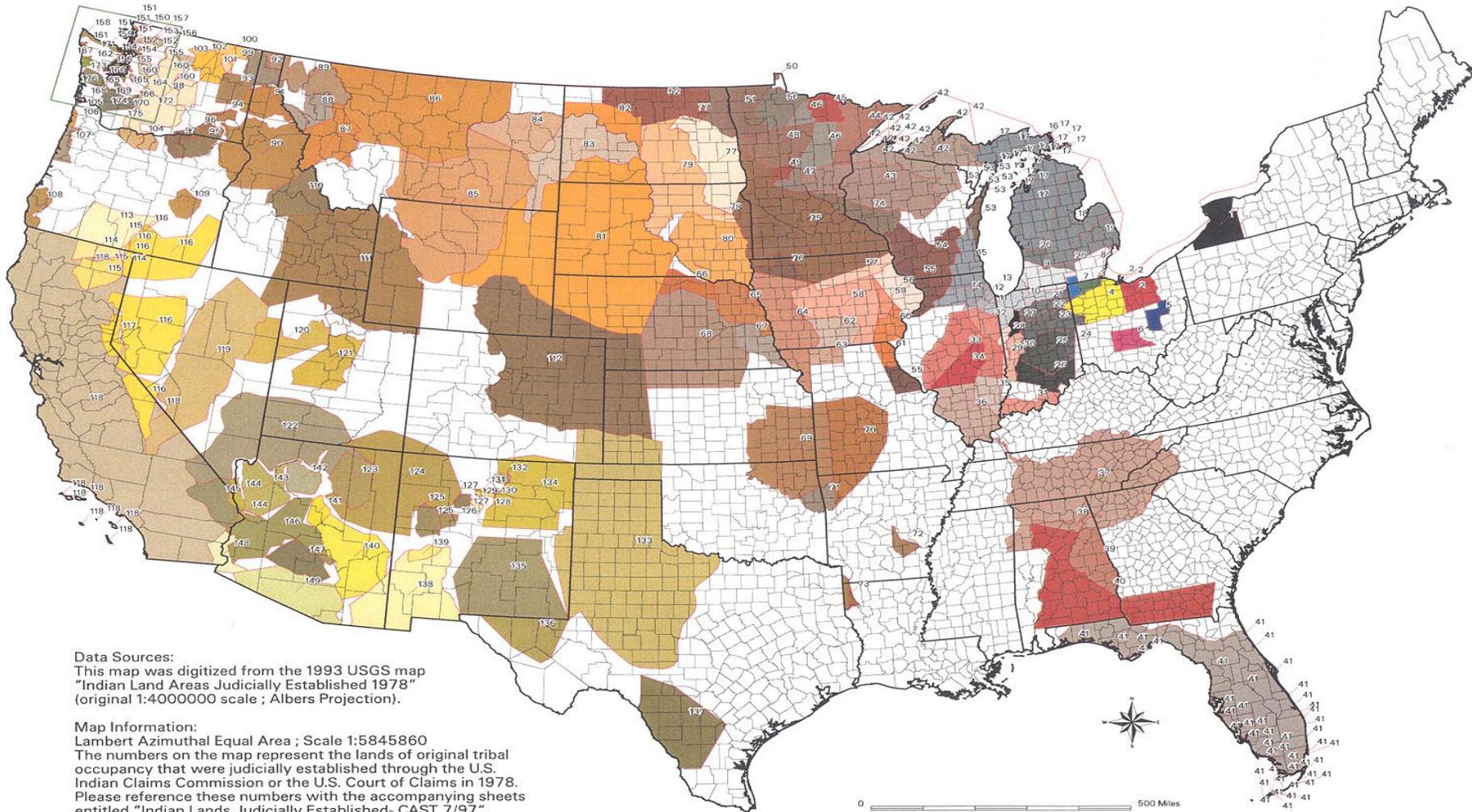
# Step 1: Identifying Consulting Parties

- **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



**Data Sources:**  
This map was digitized from the 1993 USGS map  
"Indian Land Areas Judicially Established 1978"  
(original 1:4000000 scale ; Albers Projection).

**Map Information:**  
Lambert Azimuthal Equal Area ; Scale 1:5845860  
The numbers on the map represent the lands of original tribal  
occupancy that were judicially established through the U.S.  
Indian Claims Commission or the U.S. Court of Claims in 1978.  
Please reference these numbers with the accompanying sheets  
entitled "Indian Lands Judicially Established- CAST 7/97".

## 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)

Yes

No

No

Yes

**Program Alternative Shunt**

If available, use Program Alternative or Programmatic Agreement.  
Sec. 800.3(a)(2)

**II. INITIATION OF CONSULTATION**

**Identify SHPO and/or THPO**

- 1) Identify appropriate SHPO(s). Sec. 800.3(c)
- 2)(a) If undertaking is on, or APE includes, tribal lands, identify THPO. Sec. 800(c)(1)
- 2)(b) If no THPO has been designated and qualified, identify appropriate tribal representative. Sec. 800.3(c)(1)

**Initiate Consultation with SHPO/THPO**

Initiate consultation with appropriate SHPO or THPO or both. Sec. 800.3(c)(3)

Authorized applicant or group of applicants may initiate consultation. Sec. 800.3(c)(4)

Applicants, consultants and designees may prepare information, analysis and recommendations for the Section 106 processing but AO remains responsible for findings, and documents and studies must meet applicable standards and guidelines. Sec. 800.2(a)(3)

**III. Identify and Involve other Consulting Parties**

**1. Indian Tribes**

**Undertakings on or affecting HPs on Tribal Lands**

- Where THPO is designated, consult with THPO in lieu of SHPO. Sec. 800.2(c)(2)(i)(B).

If no THPO designated, consult with tribe in addition to SHPO. Sec. 800.2(c)(2)(i)(B)

**Projects off of Tribal Lands**

(1) Early in the planning process, make a reasonable and good faith effort to identify tribes or NHOs that might attach religious and cultural significance to HPs in the APE. Sec. 800.2(c)(2)(ii)(A); Sec. 800.3(e)(2)

(2) Invite all identified Indian tribes and NHOs to become consulting parties.

**2. Must Invite Local Governments**

Identify and invite any local government with jurisdiction over some or all of the APE to be a consulting party. Sec. 800.2(c)(3); 800.3(f)(1)

**3. Must Plan Public Notice and Involvement**

In consultation with SHPO, plan for involving the public.

Identify appropriate points for notifying the public and seeking public input. Sec. 800.3(e).

At a minimum, AO must:

- (1) provide the public with information about an undertaking and its effects on historic properties; and
- (2) seek public comment and input.

Sec. 800(2)(d)(2)

**4. May Invite Other Consulting Parties**

In consultation with the SHPO, consider written requests from groups or individuals seeking to participate, and determine whether and which to include as consulting parties. Sec. 800.3(f)(3)

or  
yes



#### 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:

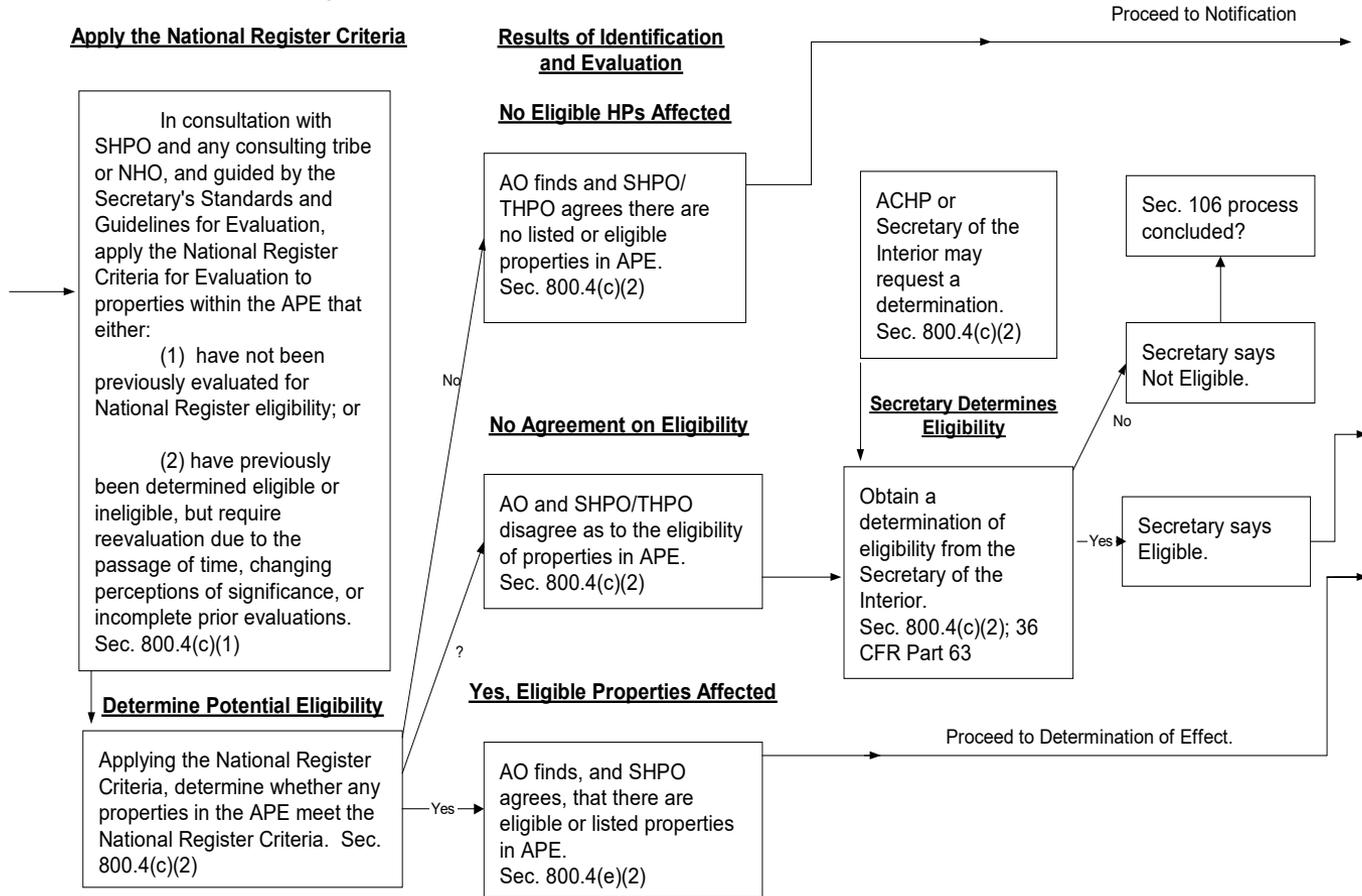
- 1) Research;
- 2) Consultation;
- 3) Oral history interviews; or
- 4) Field surveys

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



**Section 106 Process Concluded**

No further obligation under Section 106 or ACHP rules. Sec. 800.4(d)(1)

**Evaluation Period**

SHPO/THPO and ACHP have 30-day period to object. Sec. 800.4(d)(1)

No objection

~~ACHP or SHPO/THPO objection. Sec. 800.4(d)(2)~~

~~Termination of Consultation~~

~~AO disagrees with objection, one or more parties terminates consultation. Proceed to Sec. 800.7 termination procedure, infra.~~

AO agrees with objection, consultation proceeds

HPs are or may be affected.

Proceed to Effects Assess

New "Off Ramp"

**Notification of Proposed Finding of No Effect**

- 1) Provide full documentation to SHPO/THPO, including:
  - a) Description of undertaking and APE;
  - b) Photos and maps of undertaking and APE;
  - c) Description of appropriate steps taken to seek information and identify HPs; and
  - d) Basis for determination that no HPs are present or HPs are present but not affected.
- 2) Notify all consulting parties
- 3) Make documentation available to public and seek public input. Sec. 800.4(d)(1)

**Notification of Finding of Effect**

AO to notify all consulting parties including participating Indian tribes and NHOs and invite their views on the effects. Sec. 800.4(d)(2)

No Eligible HPs in APE

**VI. Determination of Effect**

Determine if undertaking may have an effect on HPs.  
"Effect" is defined as " an alteration in the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register." Sec. 800.16(i)

Eligible

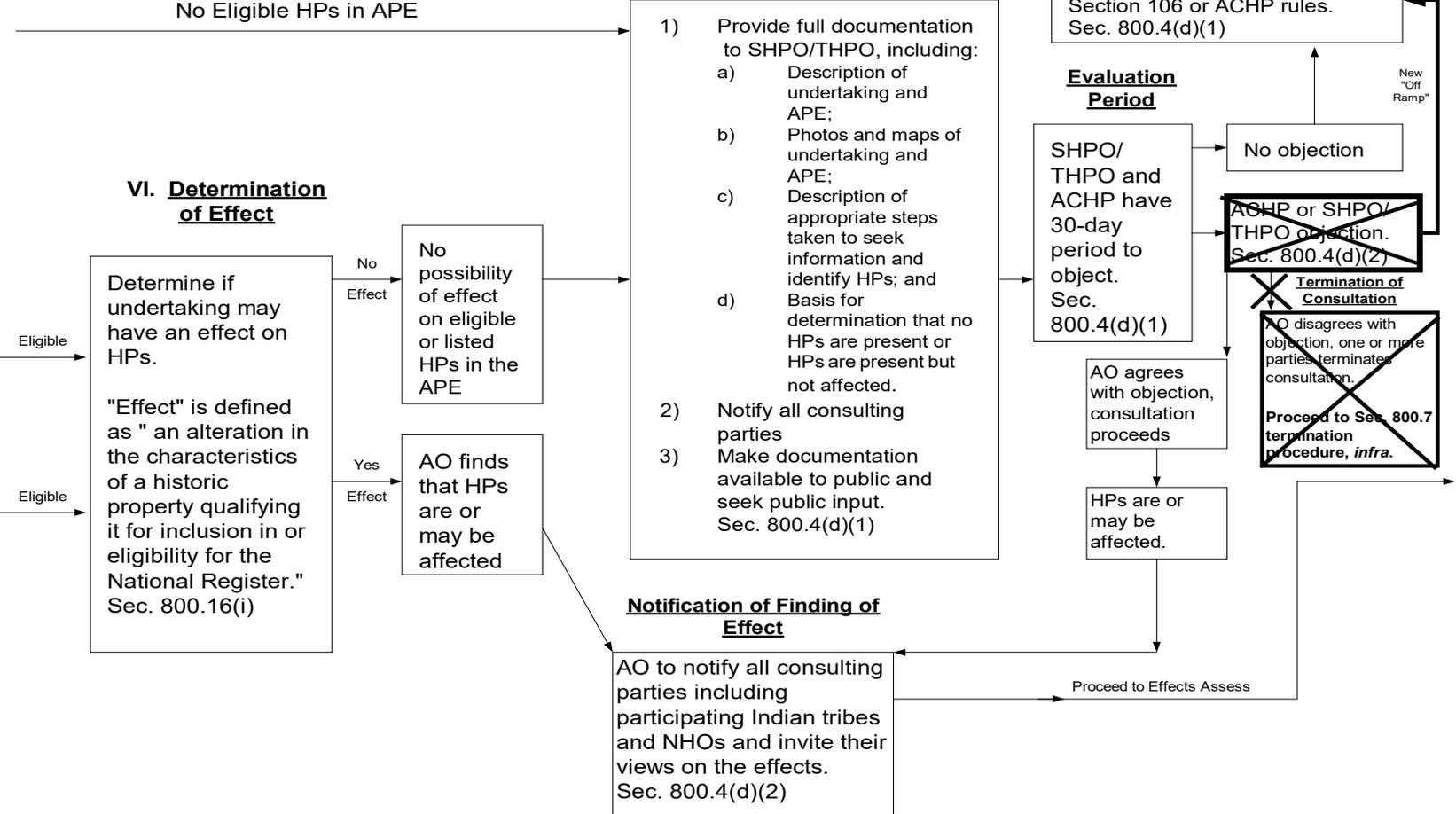
Eligible

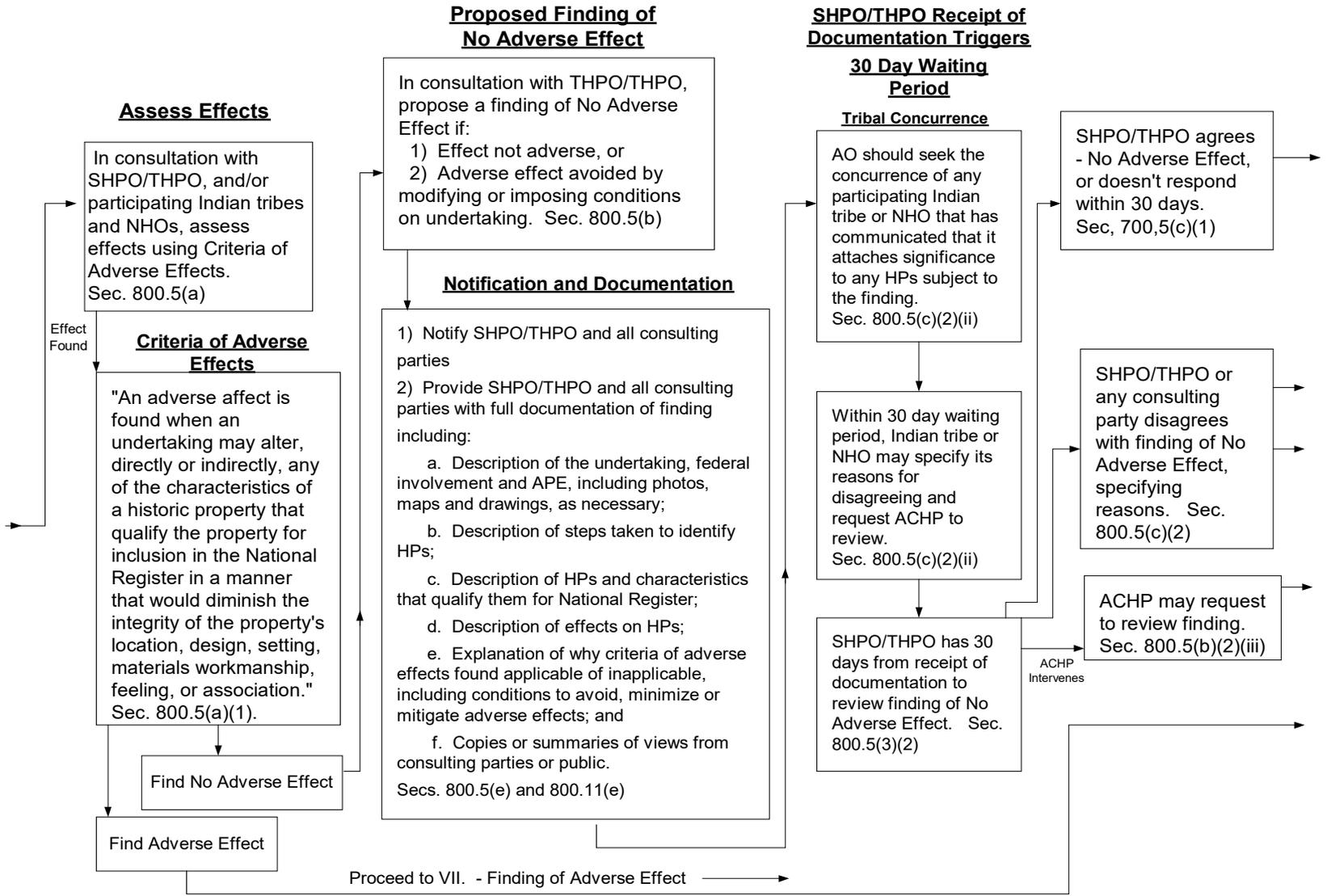
No Effect

Yes Effect

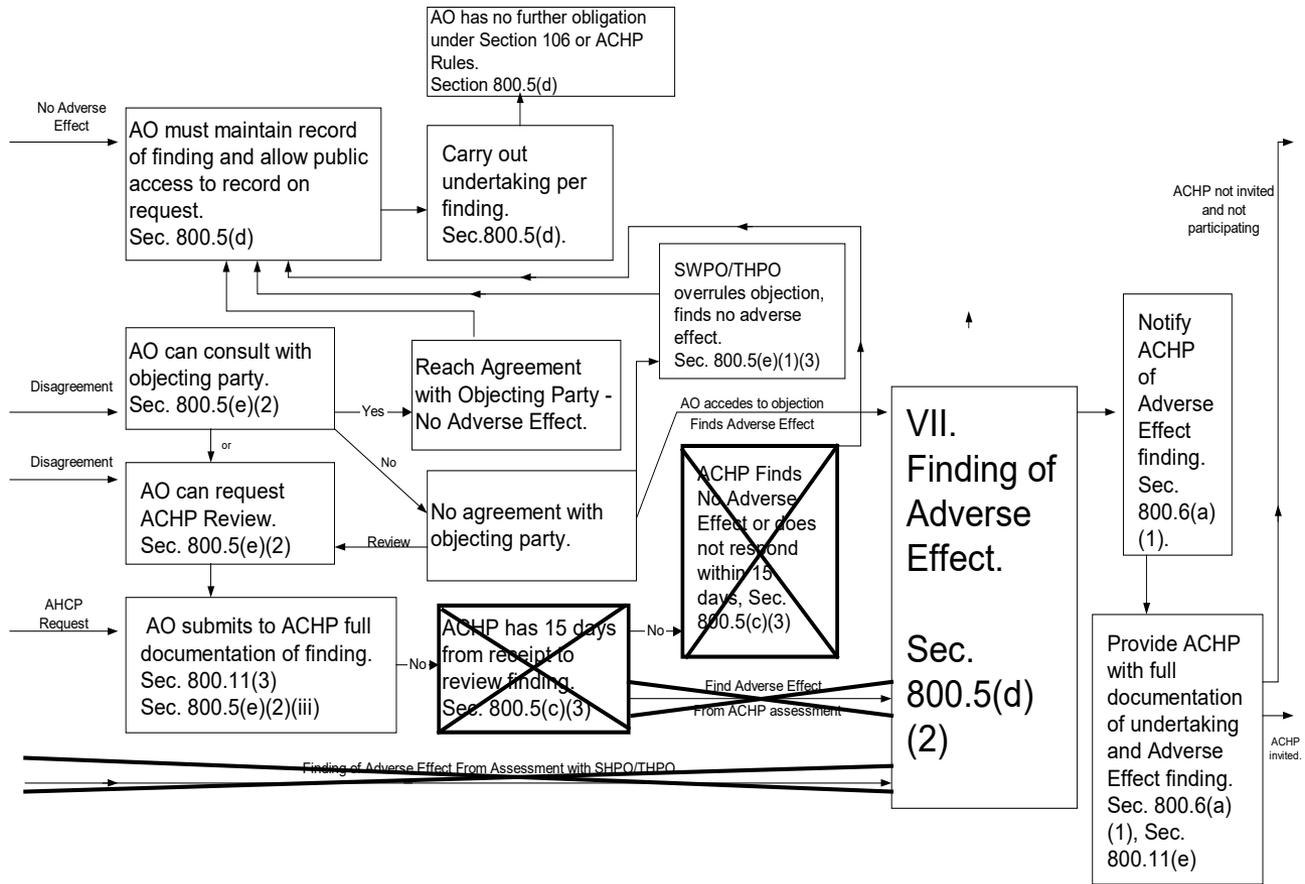
No possibility of effect on eligible or listed HPs in the APE

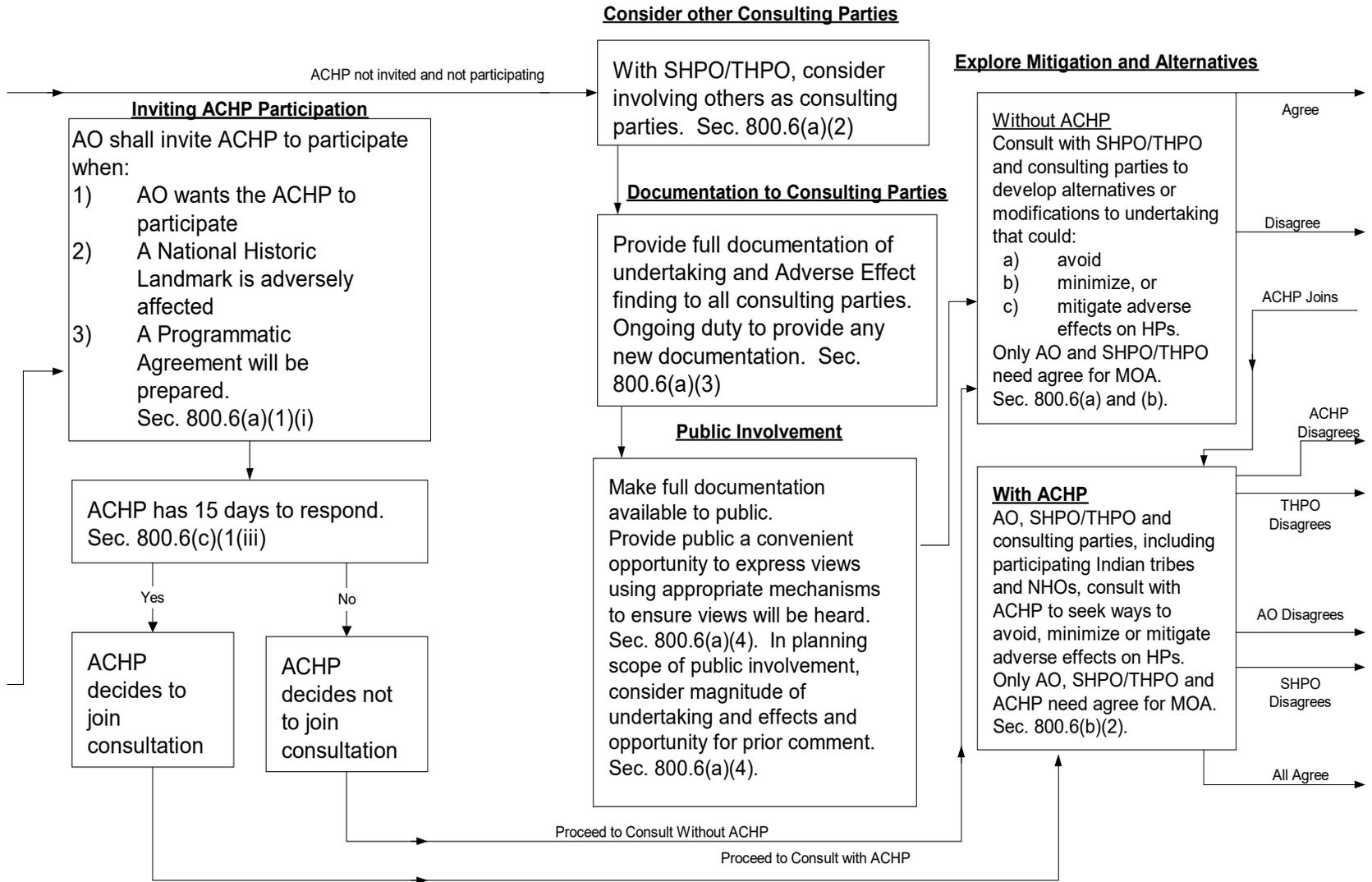
AO finds that HPs are or may be affected





**Section 106 Process Concluded**

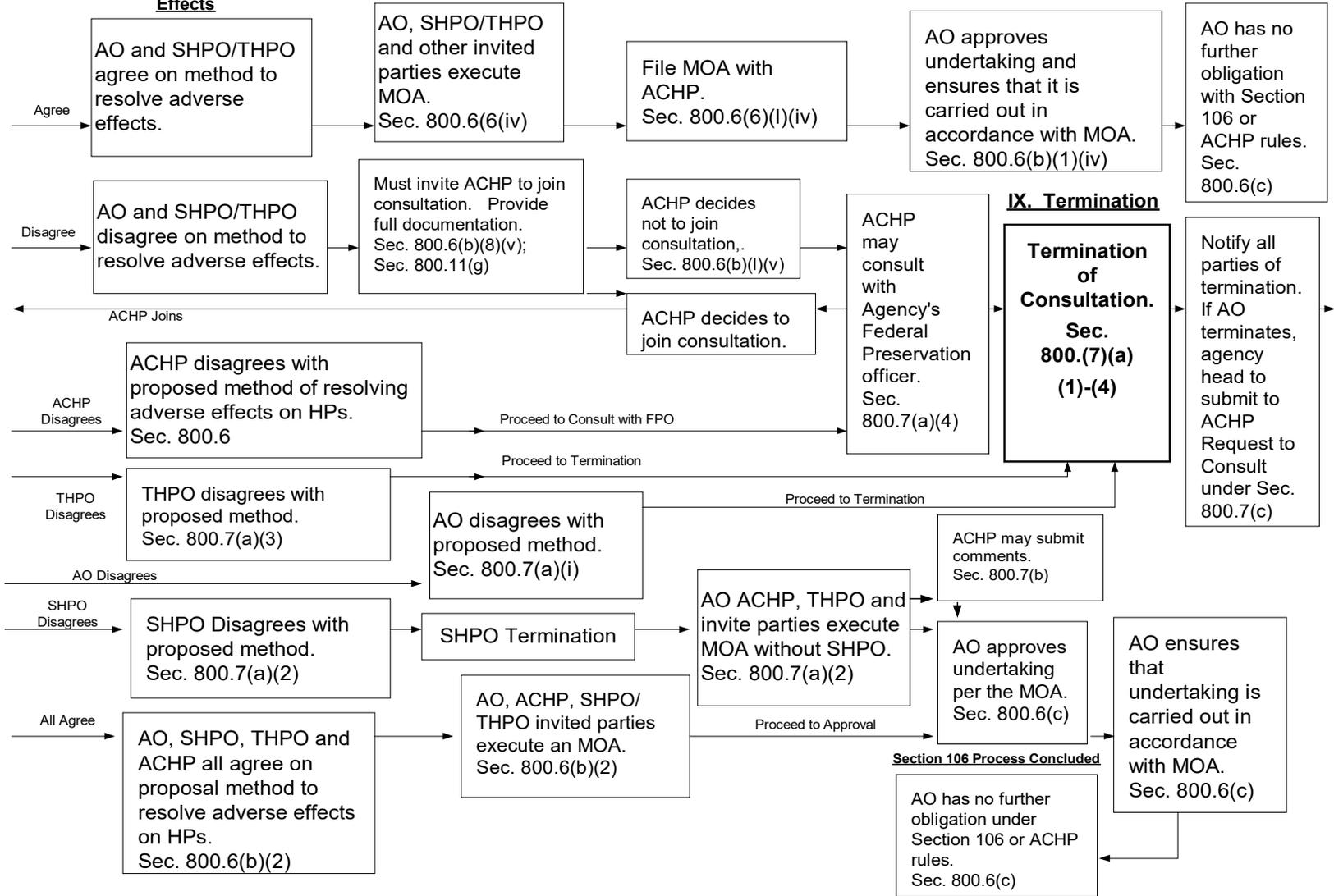




**Negotiate Proposed Methods to Resolve Effects**

**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)

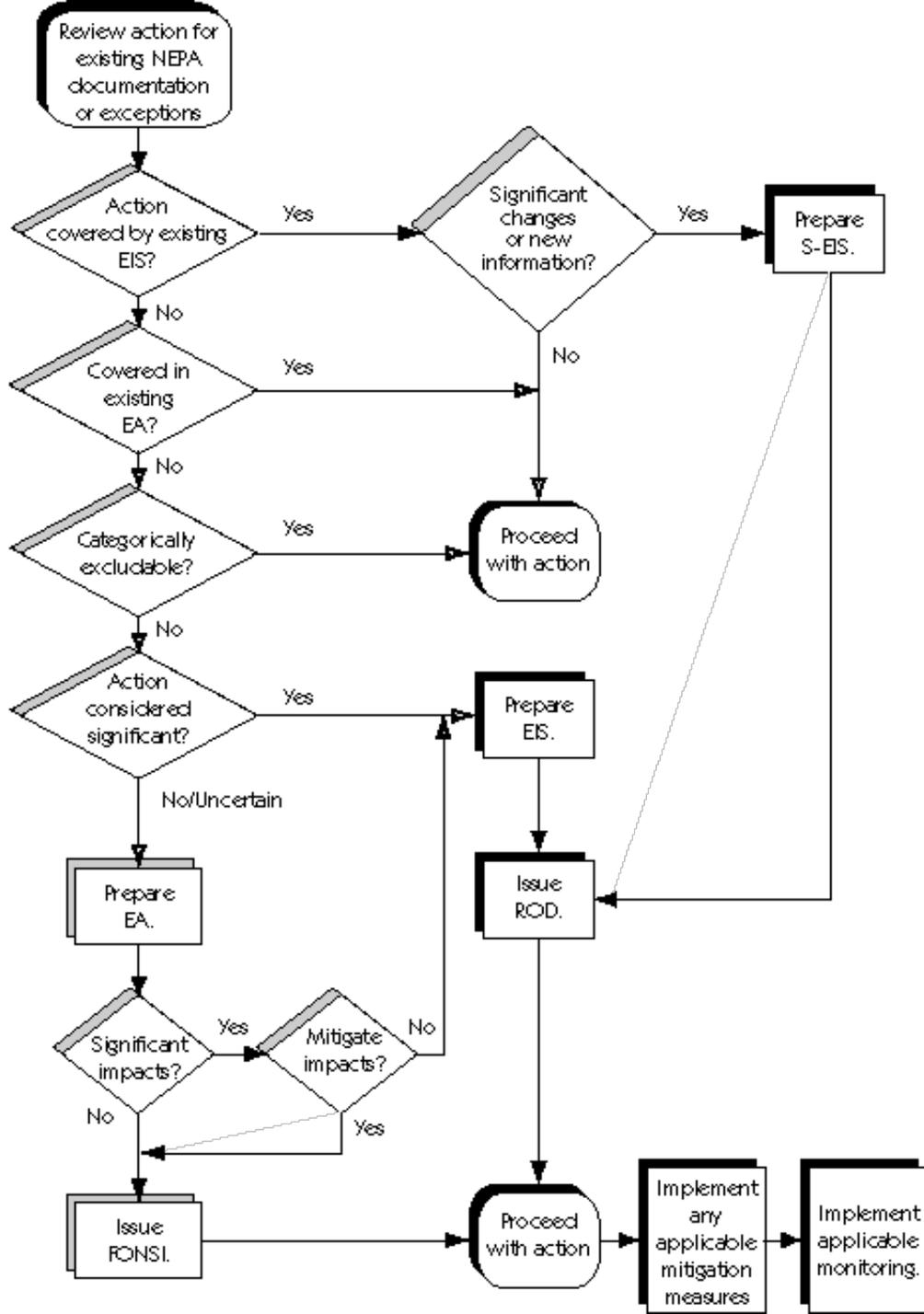
**XII. Final  
Decision**

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”

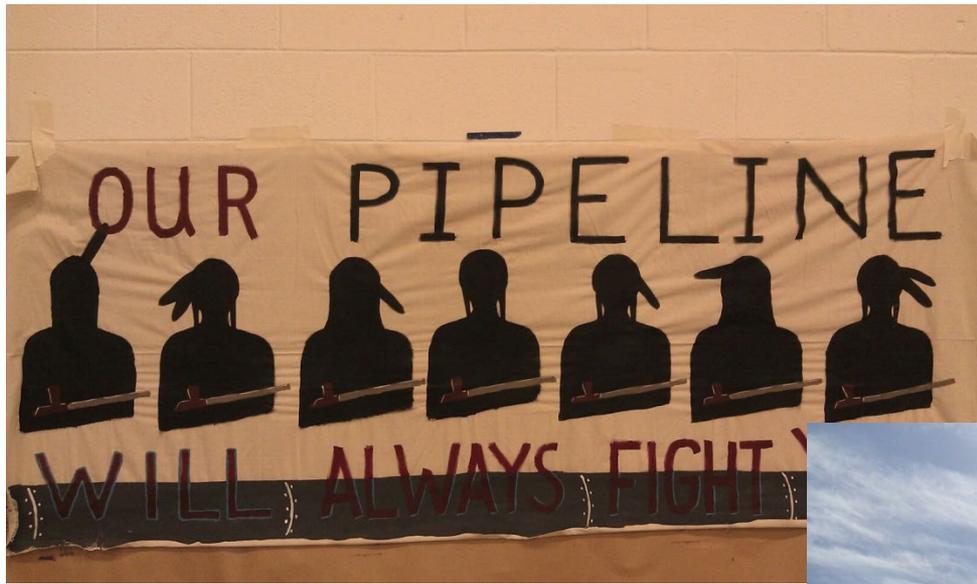


# Balance Environmental Regulation With Other National Policy Priorities



**President Obama in Cushing, OK - March 22, 2012**

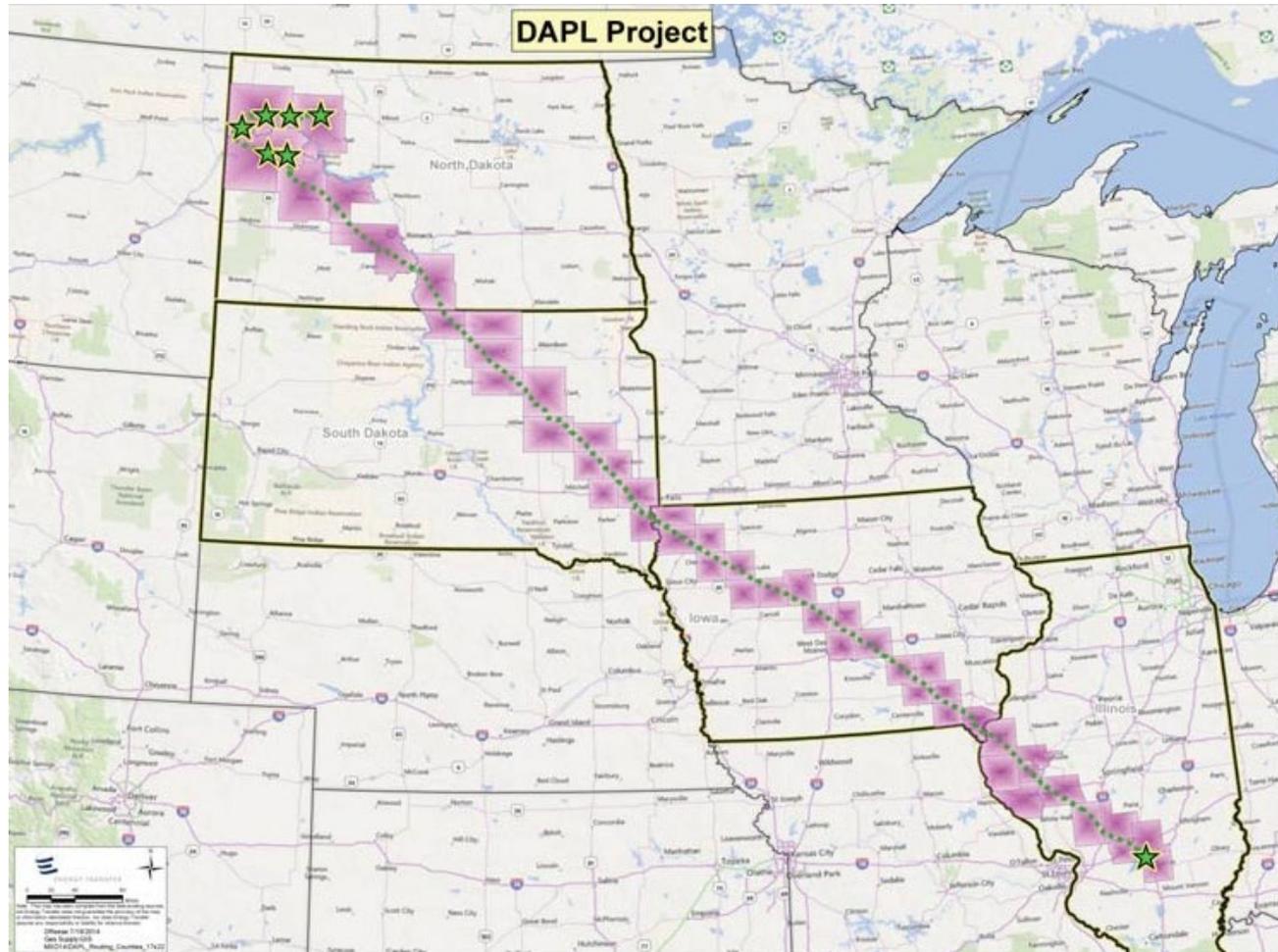
# #NoDAPL



# 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?**

**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

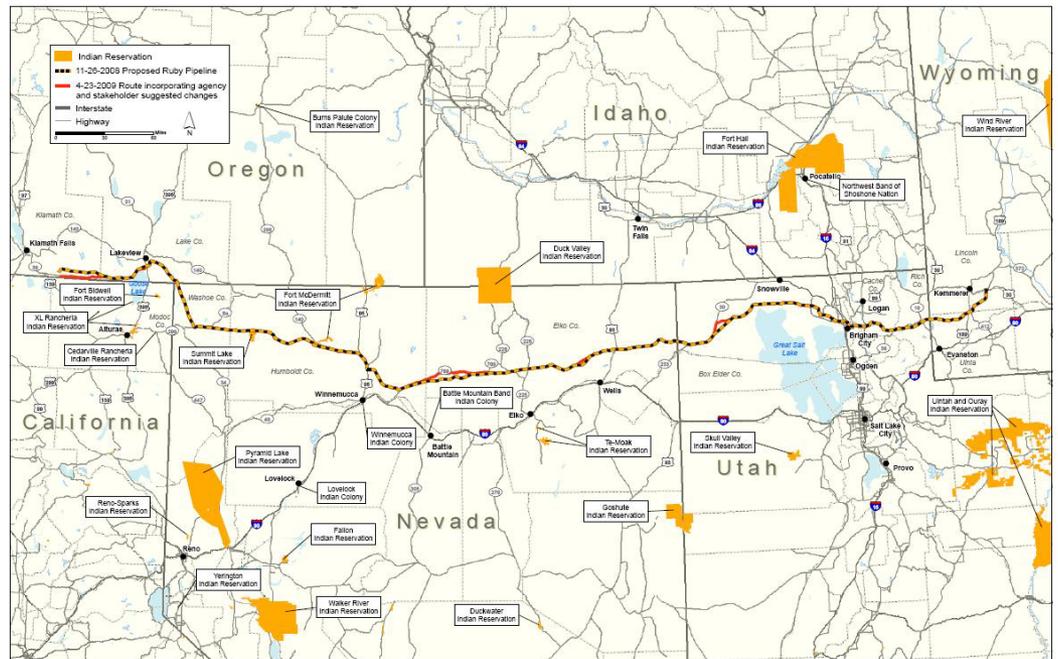
680 miles of 42-inch Pipe - Opal, WY to Malin, OR

Links Rocky Mountain Gas w/ Western US Markets

65% on public lands

44 Tribes within connections to lands

Substantial Tribal input at every phase



May 14, 2006



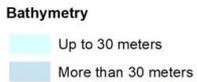
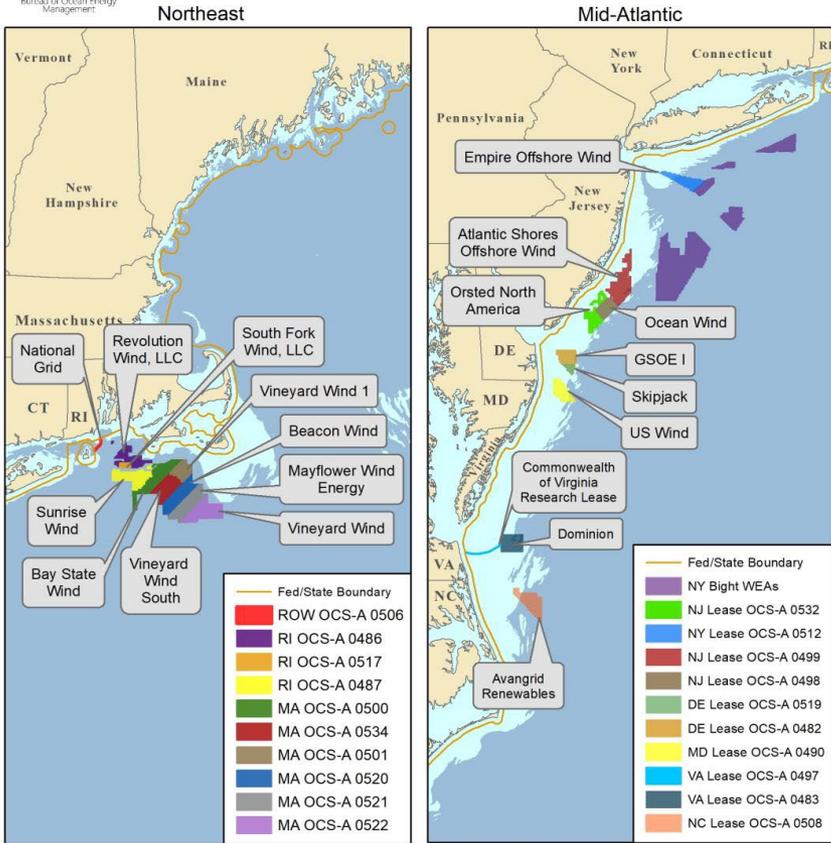
# A lot of process to navigate, 100+ Tribal Monitors worked on Ruby; Confidential Mitigation Side Agreements



# Compare to Current Offshore Wind Development



## Atlantic OCS Renewable Energy - Massachusetts to South Carolina



**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

IN REPLY REFER TO:

**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

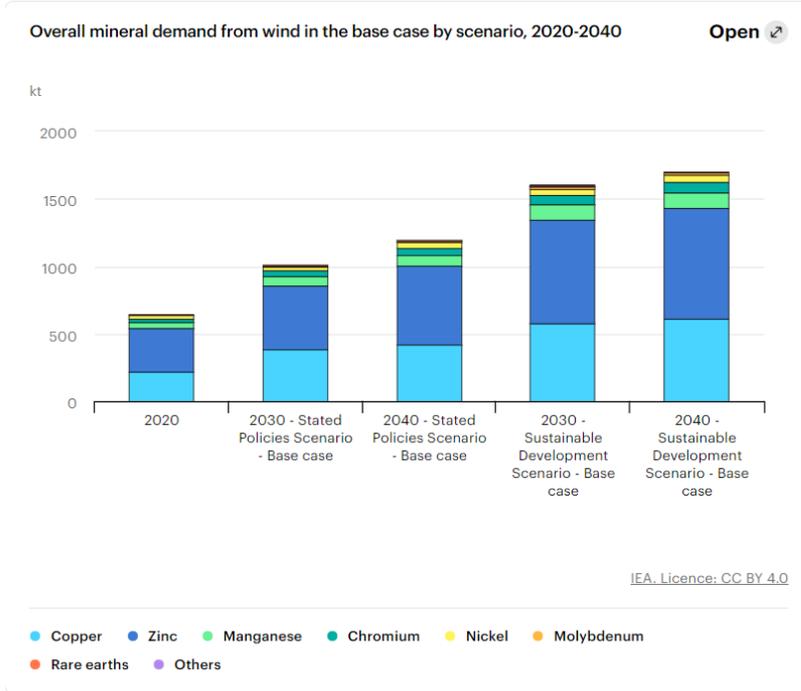
# In addition to submerged burials ...

- 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.



**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.

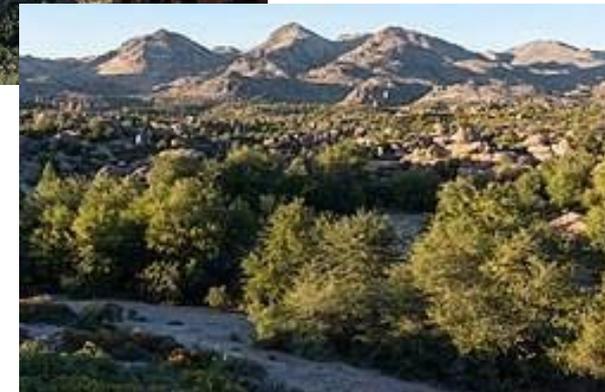
Demand for REEs in wind – neodymium and praseodymium in particular – is set to more than triple by 2040, driven by the doubling of annual capacity additions and a shift towards turbines with permanent magnets. **Copper demand reaches 600 kt per year in 2040, propelled by offshore wind requiring greater 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**

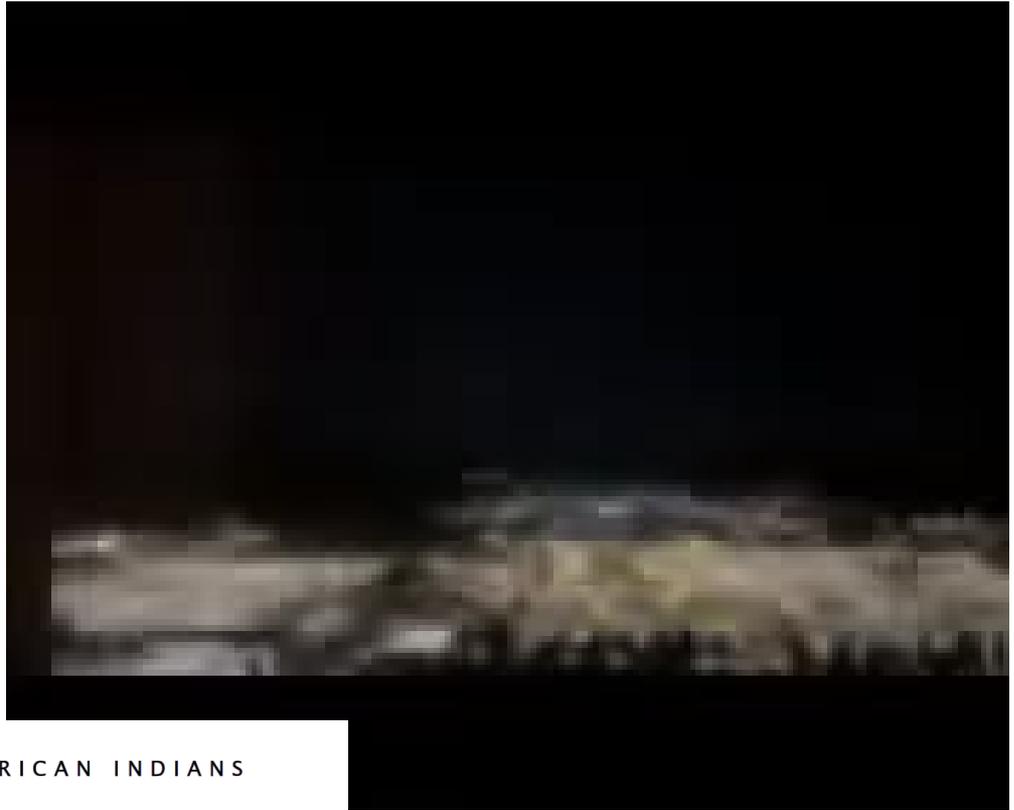
8/2/66  
**Sees Need of Program to  
Conserve Resources  
of Vineyard**

By Peter S. McGhee

AUG

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**

**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

**EXECUTIVE COMMITTEE**

**PRESIDENT**  
Fawn R. Sharp  
Quinnault 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





# OCEAN JUSTICE STRATEGY

A REPORT BY THE OCEAN POLICY COMMITTEE

DECEMBER 2023



THE WHITE HOUSE  
WASHINGTON

# 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.



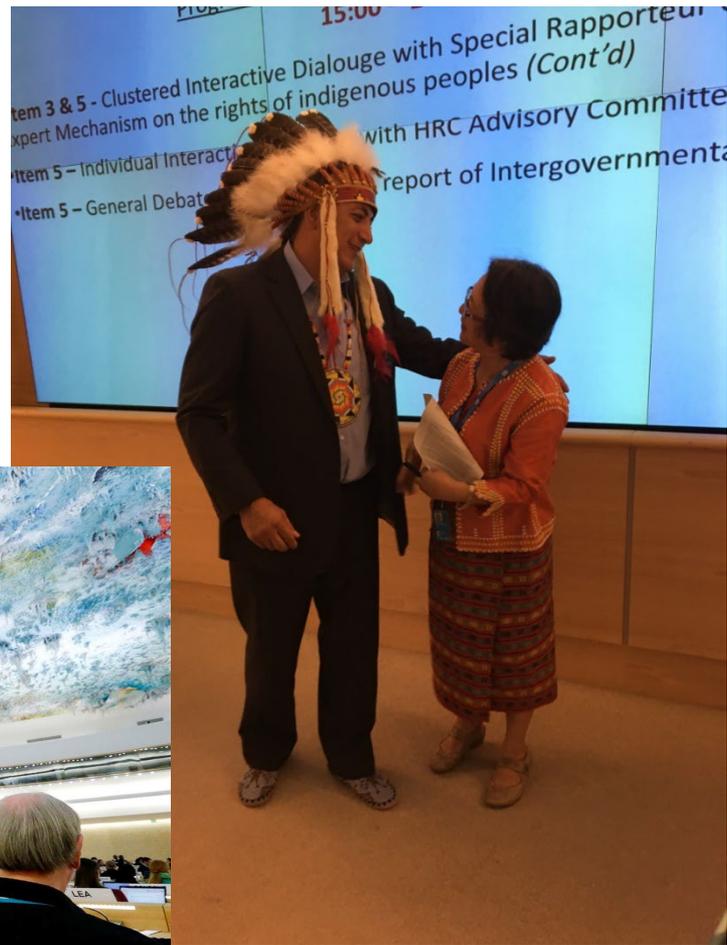
Process is unsatisfying.



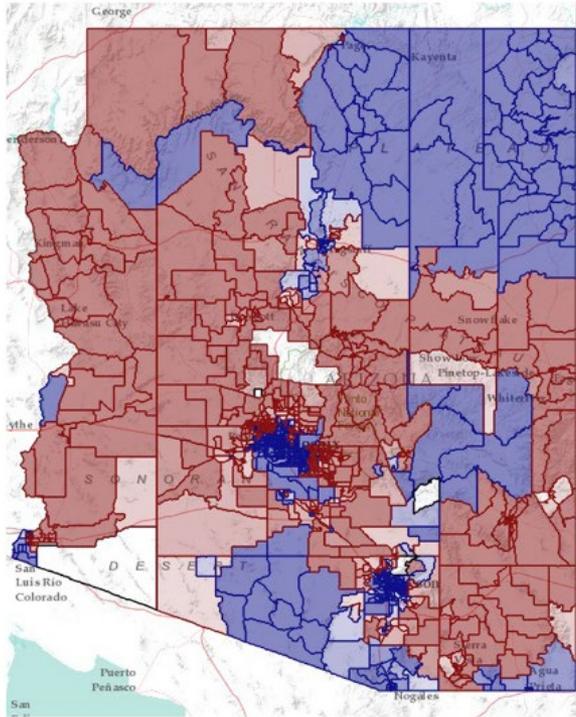
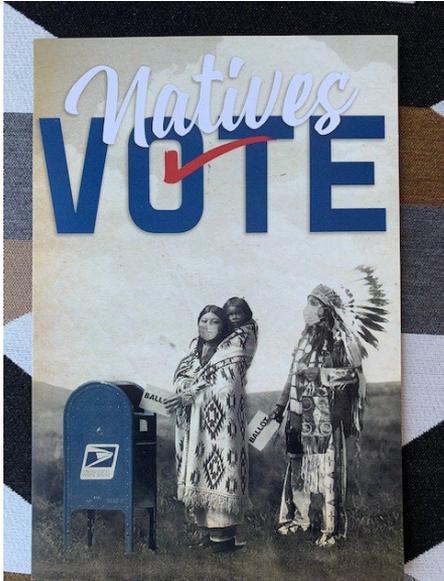
“Everyone has a plan until they get hit in the mouth.”

- 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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