



Hualapai Department of Cultural Resources

P.O. Box 310

Peach Springs, Arizona 86434

Office: 928.769.2223 FAX: 928.769.2235

November 30, 2016

HDCR2017-039

Submitted via email to consultation@bia.gov

Office of the Assistant Secretary – Indian Affairs
Attn: Office of Regulatory Affairs & Collaborative Action
1849 C Street, NW, MS 3071
Washington, DC 20240

RE: Comments on Federal Decision-making on Infrastructure Projects

Dear Sir,

On behalf of the Hualapai Nation, we appreciate the opportunity to submit comments regarding federal decision-making on infrastructure projects. As Tribal Historic Preservation Officer (THPO), we write to endorse the comment memorandum on this topic filed by the National Congress of American Indians (NCAI), especially the comments relating to the National Historic Preservation Act (NHPA). The review process established pursuant to NHPA section 106 typically does apply to large-scale infrastructure projects that require some kind of federal action and/or federal funding. The section 106 process has become the principal mechanism under federal law in which Tribal governments can advocate for the preservation of sacred places that are outside the territorial jurisdiction.

The Hualapai Indian Reservation, in what is now northwestern Arizona, is about one million acres in size and includes about one-seventh of the Hualapai ancestral territory. There are many places outside the boundaries of the Reservation that are sacred for Hualapai Tribal members. The Hualapai Nation was one of the first Tribes to establish a THPO program pursuant to the NHPA Amendments of 1992, and the Hualapai Department of Cultural Resources (HDCR) now has two decades of experience with the section 106 process, including advocating for the preservation of historic properties that hold religious and cultural significance for Hualapai people.

The section 106 process has the potential to become an effective mechanism for avoiding adverse impacts to tribal sacred places – if federal agencies were to faithfully fulfill their legal responsibilities under the existing statutory language and implementing regulations. The statute requires federal agencies to consult with Tribes. Before approving an undertaking that would affect a historic property to which a Tribe attaches religious and cultural significance, the agency is required to include the Tribe in the section 106 process. 54 U.S.C. § 302706. The regulations of the Advisory Council on Historic Preservation (ACHP), 36 C.F.R. part 800, include numerous

provisions to implement this statutory requirement, some of which are discussed in the NCAI comment memorandum.

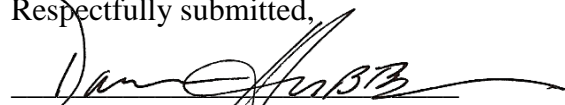
Unfortunately, federal agencies do not always carry out the section 106 process in accordance with the ACHP regulations. The regulations require that, at the first step in the process, as soon as the agency official determines that a proposed Federal action is an undertaking that has the potential to cause effects on historic properties, the “agency official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties.” 36 C.F.R. § 800.3(f)(2). If the agency official actually does this, there may be time to modify the undertaking to avoid adverse effects on tribal sacred places. In many cases, however, this requirement is not fulfilled, and Tribal input is not sought until late in project design. This problem is particularly prevalent among permitting agencies, such as the Army Corps of Engineers, which rely on applicants to prepare most of the documentation used in their environmental review processes.

One reason that early consultation with Tribes in the section 106 process is so important is that, while tribal sacred places can often be shown to be eligible for the National Register of Historic Places, for most such places, eligibility determinations typically have not yet been made. Documenting and evaluating these places typically takes time. It may involve identifying and interviewing Tribal elders who have knowledge of oral traditions. Federal agencies should understand that if they really do make the required “reasonable and good faith effort” at the “Identification of historic properties” step in the process, 36 C.F.R. § 800.4, there will be a better likelihood of an outcome that is acceptable to all parties.

Federal agencies should also understand that, while leaving Tribes out until late in the process can result in delays, with attendant inconveniences and expenses for project proponents, there may well be impacts on Tribes that are of a different order of magnitude. The failure to reach agreement on acceptable measures to resolve adverse effects on historic properties means more than the loss of places that have historic significance. The destruction of a tribal sacred place can be a blow to the cultural and religious identity of a Tribe. Such destruction is contrary to the national policy enshrined in the American Indian Religious Freedom Act (AIRFA), 42 U.S.C. § 1996, but, unfortunately, that policy is not judicially enforceable.

If faithfully carried out, the section 106 process can be used to inform federal agency decisions so that the infliction of such harm can be avoided, and so that the principle of AIRFA can be honored. For detailed recommendations, we commend your attention to the NCAI comment memorandum.

Respectfully submitted,



Dawn Hubbs, Director / Tribal Historic Preservation Officer
Hualapai Department of Cultural Resources

Cc: Dr. Damon R. Clarke, Chairman, Hualapai Tribe
Mr. Philbert Watahomigie, Sr., Vice-Chairman, Hualapai Tribe