



FirstNet™

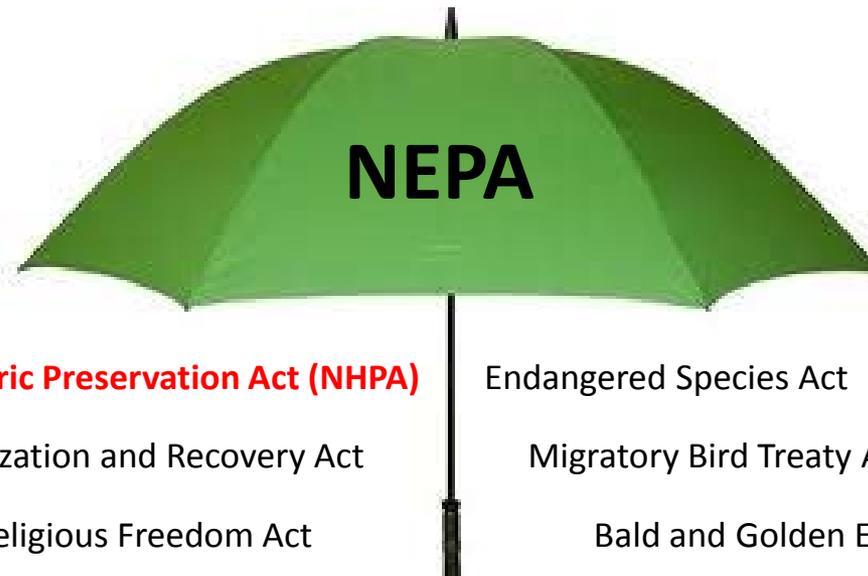


FirstNet Historic Preservation Requirements

Christopher Eck
Federal Preservation Officer

December 10, 2014

NEPA is considered an “umbrella law” as it provides a framework within which a wide variety of environmental requirements can be evaluated



National Historic Preservation Act (NHPA)

Superfund Authorization and Recovery Act

American Indian Religious Freedom Act

Floodplains and Wetlands laws and requirements

State and Local Land use requirements

Endangered Species Act

Migratory Bird Treaty Act

Bald and Golden Eagle Act

Executive Orders on Environmental Justice

Clean Water Act

Native American Graves Protection and Repatriation Act

Just a few of the requirements addressed under NEPA

FirstNet & NHPA Compliance



What is the national historic preservation act?

- NHPA was passed by Congress in 1966 to serve as a way to protect America's significant historic buildings, structures, places and archaeological sites from destruction that was funded, permitted or managed by the Federal Government

National Historic Preservation Act of 1966,
As amended through 2006
[With annotations]

[This Act became law on October 15, 1966 (Public Law 89-665; 16 U.S.C. 470 et seq.). Subsequent amendments to the Act include Public Law 91-243, Public Law 93-54, Public Law 94-422, Public Law 94-458, Public Law 96-199, Public Law 96-244, Public Law 96-515, Public Law 98-483, Public Law 99-514, Public Law 100-127, Public Law 102-575, Public Law 103-437, Public Law 104-333, Public Law 106-113, Public Law 106-176, Public Law 106-208, Public Law 106-355, and Public Law 109-453. This description of the Act, as amended, tracts the language of the United States Code except that (in following common usage) we refer to the "Act" (meaning the Act, as amended) rather than to the "subchapter" or the "title" of the Code. This description also excludes some of the notes found in the Code as well as those sections of the amendments dealing with completed reports. Until the Code is updated through the end of the 106th Congress, the Code citations for Sections 308 and 309 are speculative.]

AN ACT to Establish a Program for the Preservation of Additional Historic Properties throughout the Nation, and for Other Purposes.

Section 1

[16 U.S.C. 470—Short title of the Act]

- (a) This Act may be cited as the "National Historic Preservation Act".

[Purpose of the Act]

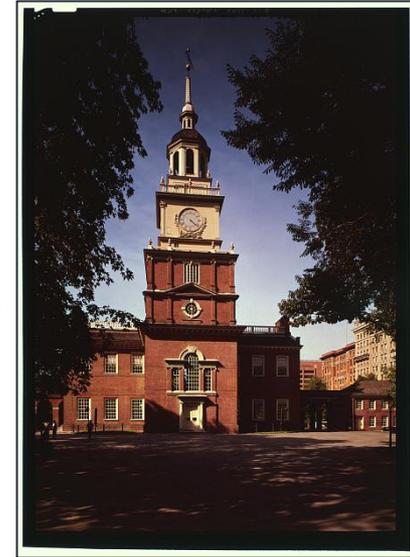
- (b) The Congress finds and declares that—
- (1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;
 - (2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;
 - (3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;
 - (4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;
 - (5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;
 - (6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and
 - (7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is

Why is NHPA Compliance important?

- Compliance with **Section 106** of the NHPA is important because it requires federal agencies to take into account the effects of their actions (“undertakings”) on historic properties and afford the **Advisory Council on Historic Preservation** (“ACHP”) a reasonable opportunity to comment
- As part of compliance, a federal agency is required to determine whether its activities could affect historic properties, which are those properties listed or eligible for listing on the **National Register of Historic Places** (“National Register”)
- If the agency can document that no historic properties are affected, the agency can proceed with its undertaking
- **Early action** in addressing historic preservation issues enables an agency to move forward in a timely manner

NHPA Compliance and successful consultation

- If historic properties may be affected, then the federal agency, in consultation with **State Historic Preservation Officers** (“SHPOs”) and **Tribal Historic Preservation Officers** (THPOs”), determines the scope of the potential effect of its actions and works to resolve any adverse effects by avoiding, minimizing or mitigating harm to historic properties
- Successful consultation often results in a **Memorandum of Agreement (MOA)**
- The Section 106 regulations emphasize the **importance of consulting** with Indian Tribes and Native Hawaiian Organizations



NHPA Compliance and failure to reach agreement

- If the agency fails to reach agreement on whether there is an adverse effect or fails to find a way to resolve such effects, the ACHP may participate to help resolve the issues
- If a SHPO terminates consultation, then the agency along with a THPO and the council may still conclude an MOA
- If a consulting THPO terminates consultation—and the potential adverse effect is on tribal land—then the agency requests written comments from the ACHP and it must provide a response. The agency then must take into account the ACHP’s comments before proceeding further
- The key to avoiding a successful challenge to its activities is that the agency made a “**reasonable and good faith effort**” to consult and follow the process

FirstNet & NHPA Compliance (continued)



Key points to section 106 of the NHPA

- NHPA is important because it places the federal government—through its agencies—in the lead stewardship role for protecting historical, archaeological and cultural resources for the nation
- NHPA promotes a partnership relationship among federal agencies and the States, Indian Tribes and Native Hawaiian Organizations
- It provides a mechanism for public involvement that can alert federal agencies to activities that might affect ancient archaeological sites, compromise American Indian and Native Hawaiian religious sites or damage historically important landmarks and helps to avoid negative media attention
- Failure of a federal agency to properly follow the process can result in legal actions—such as the issuance of an injunction—and delays and project uncertainty





FirstNet™



Thank You