

Appendix B: Response to Comments on Draft Interim Staff Guidance NMSS-ISG-02 (formerly Draft ISG FSME-ISG-02)

The U.S. Nuclear Regulatory Commission (NRC) published draft Interim Staff Guidance (ISG) NMSS-ISG-02, “Guidance for Conducting the Section 106 Process of the National Historic Preservation Act for Uranium Recovery Licensing Actions,” (formerly Draft ISG FSME-ISG-02) for use and comment in the *Federal Register* (FR) on June 18, 2014 (79 FR 34792). The public comment period was originally scheduled to close on September 2, 2014. On September 3, 2014, the NRC decided to extend the public comment period until November 17, 2014, to allow more time for members of the public to submit their comments (79 FR 52374).

There were several administrative comments that have been addressed throughout the document and are not reflected on this appendix. The NRC staff has dispositioned all other comments in Table B.2 below. Table B.2 provides a summary of the comments received and a summary of NRC staff’s responses to the comments in preparing the final ISG (Agencywide Documents Access and Management System [ADAMS] Accession No. ML19212A753).

Table B.1. List of Commenters

	Commenter	Date	ADAMS Accession Number
1	Charlene Dwin Vaughn, Advisory Council on Historic Preservation (ACHP)	10/07/2014	ML14282A180
2	Jonathan Downing, Wyoming Mining Association (WMA)	08/25/2014	ML14252A136
3	North Dakota State Historic Preservation Officer (SHPO)	08/25/2014	ML14254A410
4	Scott Kamber	11/14/2014	ML14325A255
5	Katie Sweeney, National Mining Association (NMA)	11/17/2014	ML14329A025
6	Russell Eagle Bear, Rosebud Sioux Tribe	11/17/2014	ML14332A090
7	Steve Vance, Cheyenne River Sioux Tribe	11/14/2017	ML14329A024

Table B.2. Summary and Resolution of Comments

Comment Summary		Response
Advisory Council on Historic Properties, ACHP		
1-1	A federal agency should always try to coordinate its compliance with the National Environmental Policy Act (NEPA) and Section 106 of the National Historic Preservation Act (NHPA). However, a federal agency only has to notify ACHP and SHPO/Tribal Historic Preservation Officer (THPO) if it plans to substitute the NEPA process for the procedures set forth in Title 36 of the <i>Code of Federal Regulations</i> (36 CFR) 800.3 through 800.6 when it intends to comply with 36 CFR 800.8(c). See the guidance recently issued by ACHP and Council on Environmental Quality's (CEQ) "NEPA and NHPA: A Handbook for Integrating NEPA and Section 106."	<p>Section 6.1 of the ISG was revised to clarify that the regulations at 36 CFR 800.8 only require notification to the ACHP and SHPO/THPO if the NRC will coordinate the NHPA Section 106 process with the NEPA process. It is NRC's practice, however, to also notify other consulting parties about such coordination.</p> <p>The ACHP and CEQ guidance document, "NEPA and NHPA: A Handbook for Integrating NEPA and Section 106," which may provide useful information on this matter, has been added to the references in section 7 of the ISG.</p>
1-2	The undertaking does not become subject to Section 106 review until NRC receives a formal application.	Section 6.1.1 of the ISG was revised to provide additional information regarding when an NRC licensing action would be subject to the Section 106 review.
1-3	The regulations recognize that in addition to the participants in the Section 106 process listed in 36 CR 800.2, certain individuals and organizations with a demonstrated interest in an undertaking are appropriate to participate in the Section 106 review as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties [36 CFR 800.2(d)].	Section 6.1.2 of the ISG was revised to provide additional information about the participants in the Section 106 process.
1-4	Native Hawaiian Organizations (NHO) do not have THPOs.	Section 6.1.2 of the ISG was revised per this comment.
1-5	Regarding the initiation of consultation, the NRC staff should consult ACHP's guidance on best practices in tribal consultation, "Consultation with Indian Tribes in the Section 106 Review Process: A Handbook and Consultation with Native Hawaiian	The referenced ACHP guidance was not found; however, the following ACHP consultation guidance documents, which may provide useful guidance, have been added to the references in section 7 of the ISG: (2) "Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions" January 2017 and (2) "Section 106 Consultation Between Federal Agencies and

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	Organizations in the Section 106 Review Process: A Handbook.”	Indian Tribes Regarding Federal Permits, Licenses, and Assistance Questions and Answers.”
1-6	The federal agency determines the area of potential effects (APEs) and scope of the identification effort in consultation with SHPO and/or THPO, as appropriate.	Section 6.2 of the ISG was revised to clarify that the scope of the identification efforts is determined in consultation with the SHPO/THPO, as appropriate.
1-7	In addition to referencing 36 CFR 800.11(c) of the Section 106 regulations, the NRC should reference Section 304 of the NHPA in discussions regarding confidentiality.	The ISG has been revised to also reference Section 304 of the NHPA and the NRC staff guidance on this matter, “Staff Guidance for Withholding Sensitive Information About Historic Resources in Accordance with the National Historic Preservation Act.”
1-8	There may be multiple, overlapping APEs, depending on the types of historic properties that may be affected and the nature of the effects. APEs can also change over the course of the Section 106 consultation as new information is learned.	Section 6.2.1 of the ISG addresses the factors to consider when determining the APE.
1-9	The NRC should add a bullet point specifying the need to consider the potential for the presence of and the need to require surveys to identify historic properties that may be subject to indirect effects from the undertaking located beyond the direct effect footprint of the undertaking.	Section 6.2.1 of the ISG recognizes the need to consider effects beyond the footprint of the undertaking. Surveys, however, are not required by the regulations at 36 CFR 800, but are one of the methods that can be used to identify historic properties. The ISG addresses surveys in Section 6.2.2.1 of the ISG.
1-10	36 CR 800.4(a)(3) instructs the federal agency to seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area.	The ISG identifies different ways to gather information about the presence of historic properties and does not limit such efforts to information gathered from consulting parties.
1-11	36 CFR Part 800 requires federal agencies to make a “reasonable and good faith effort” to identify historic properties that may be affected by their undertakings. The regulations set out several factors that need to be considered in making the effort both reasonable in terms of intensity and scale and carried out in good faith through its development and execution.	Section 6.2.2 of the ISG describes the process for determining the scope and level of effort of the agency’s identification efforts based on the nature, scale, and scope of the undertaking in a reasonable and good faith manner. The ISG also acknowledges the special expertise the Tribes possess in identifying and evaluating properties of significance to Tribes and the importance of their involvement during identification efforts. ACHP guidance addressing a “reasonable and good faith effort” and the U.S.

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	36 CFR Part 800 also acknowledges the special expertise possessed by Tribes in assessing the eligibility of historic properties that may possess religious and cultural significance to them (regardless of whether or not such Tribes and organizations meet the Secretary of Interior's [Secretary] qualification standards).	Department of Interior's "Standards and Guidelines for Archaeology and Historic Preservation" are included in the references section of this ISG and may provide useful guidance.
1-12	Depending on the circumstances of the specific undertaking, the use of an "open-site approach to field survey," as defined by NRC, may not necessarily meet the requirements of a reasonable and good faith identification effort. The open-site approach for field survey may help to facilitate such consultation, but may not necessarily achieve the reasonable and good faith standard for identification. The suitability of an open site methodology for field survey to achieve the reasonable and good faith standard for identification must be judged on a case-by-case basis.	Section 6.2.2.1 of the ISG was revised to remove the discussions about an open-site survey because the approach to be chosen for conducting survey fieldwork will be developed taking into consideration the scope, nature, and intensity of the undertaking, and the input from consulting parties. An open-site survey approach, however, recognizes the special expertise that Tribes possess in that it does not impose a method on a Tribe or limit the method a Tribe chooses to implement that the Tribe has deemed culturally appropriate.
1-13	Previously evaluated properties may have to be re-evaluated given the passage of time or based upon changing conditions.	Section 6.2.3.1 of the ISG was revised to clarify that properties previously determined eligible or ineligible may have to be re-evaluated based on the passage of time, changing conditions or incomplete prior evaluations.
1-14	State requirements are not specifically relevant to determinations of eligibility under Section 106.	Section 6.2.3.2 of the ISG recommends that the NRC staff consider State or SHPO's documentation guidelines in preparing eligibility documentation for SHPO/THPO concurrence.
1-15	The Secretary can also request that the federal agency obtain a determination of eligibility from the Secretary. 36 CFR 800.4(c)(2) of the Section 106 regulations specifies that if the agency official and the SHPO/THPO do not agree, or if the ACHP or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR Part 63.	Section 6.2.3.2 of the ISG was revised to add the Secretary role in the eligibility determination process.

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1-16	In carrying out an assessment of effects, the federal agency must also consider any views concerning such effects which have been provided by consulting parties and the public.	Section 6.3 of the ISG recognizes the consideration of the consulting parties and public views in carrying out the assessment of effects.
1-17	According to 36 CFR 800.5(c)(2)(iii), the agency official should seek the concurrence of any Tribes that has made known to the agency official that it attaches religious and cultural significance to a historic property subject to the finding.	Section 6.3 of the ISG was revised to add a reference to 36 CFR 800.5(c)(2)(iii).
1-18	The NRC should reference further details of the process for ACHP review of disputes about findings of no adverse effect as set forth in 36 CFR 800.5(c)(3) of the regulations.	The ISG references the process for the ACHP's review of disputes about findings of no adverse effect in section 6.3.1.
1-19	The federal agency must, in consultation with SHPO/THPO, and other consulting parties, develop and execute a memorandum of agreement (MOA) or programmatic agreement (PA) to resolve adverse effects and complete the Section 106 review process. As long as the terms of the MOA or PA are carried out, the federal agency remains in compliance with Section 106 for the undertaking. The only alternative to development of an MOA or PA to complete the Section 106 review or receive ACHP formal comments under 36 CFR 800.7 and respond to them, is provided through the NEPA substitution process addressed in 36 CFR 800.8(c).	Section 6.4 of the ISG was revised to identify both an MOA and a PA as approaches for resolving adverse effects, and to recommend the NRC staff to reach out to the ACHP to discuss using the NEPA substitution process in 36 CFR 800.8(c) as early as possible, if it will be used to resolve adverse effects.
1-20	Mandatory signatories for a two-party MOA or PA include the SHPO/THPO as appropriate and the federal agency. Mandatory signatories for a three-party MOA or PA, developed with the formal consultation of the ACHP, include SHPO/THPO, as appropriate, federal agency, and the ACHP. Other consulting parties may be invited to sign the agreement as "invited signatories" or as "concurring parties."	Section 6.4 of the ISG describes the roles of the signatories and refers to the 36 CFR 800 regulations for additional information.

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1-21	A PA is used when the federal agency is not able to identify all historic properties, or to assess all effects, or to develop steps to resolve adverse effects prior to approval of a complex undertaking. The Section 106 regulations specify, at 36 CFR 800.14(b)(3), that consultation to develop a PA for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow 36 CFR 800.6.	The PA discussion in section 6.4 of the ISG has been revised to reference 36 CFR 800.14(b).
1-22	The NRC should refer its applicants to guidance regarding compliance with 36 CFR Part 800 available on the ACHP webpage including the ACHP's Section 106 Applicant Toolkit.	Appendix A of the ISG was revised to refer licensees and license applicants to the ACHP's Section 106 Applicant Toolkit as this document may provide useful guidance for licensees and license applicants as they prepare applications for NRC licensing actions.
1-23	36 CFR Part 800 allows a federal agency to authorize an applicant to initiate Section 106 consultation in a specific project or program, provided that the agency first notifies the relevant SHPO/THPO and the ACHP in writing. However, the federal agency remains responsible for all Section 106 consultations with Tribes. An agency may not delegate consultation with Tribes to an applicant unless the affected Tribes have agreed to such an arrangement in writing in advance.	Appendix A of the ISG encourages licensees and license applicants to reach out to potential consulting parties as early as possible to gather input that can be used to develop the license application and associated environmental report.
Wyoming Mining Association, WMA		
2-1	The draft ISG indicates that the Section 106 process could take up to three years to complete. This is an exorbitant amount of time for consultation process as it is cumbersome, time consuming and costly for the uranium recovery industry. The Section 106 process should be conducted as quickly and efficiently as possible.	The scope, complexity, and duration of the Section 106 process can vary from project to project. The ISG, however, identifies goals with respect to completion of the different steps in the Section 106 process, which provide the appropriate flexibility.
2-2	There is no regulatory requirement that field surveys be conducted by consulting parties; 36 CFR 800.4(b)(1) includes field surveys as a potential means to carry out identification efforts. Field	Neither NHPA, NEPA, nor NRC regulations require that a field survey be conducted. Accordingly, the ISG explains that field surveys are one of the approaches that can be used to identify historic properties. Whether a field survey is conducted will be

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	surveys are one approach that may be implemented in those cases where a site's eligibility has not been determined by either the archeological survey or in consultation with the SHPO/THPO. Conducting a survey of the area with consulting parties to collect more data after the applicant has already conducted surveys per NRC regulations and NEPA requirements is a waste of the project proponent's time and money. The ISG should therefore discuss the criteria to determine the need for a field survey before assuming that one will be required for every project and discuss the specifics of how the surveys will be carried out.	determined based on factors discussed in section 6.2.2.1 of the ISG.
2-3	Section 6.2.3 of the draft ISG states "Tribal Survey teams can also provide recommendations on possible measure(s) to limit adverse effects on historic properties." If the NRC in consultation with the SHPO/THPO has made a determination that an undertaking will have an adverse effect on an eligible site that determination will be made at the beginning of the Section 106 process when the proponent's survey data has been submitted for review. Consulting parties will then have the opportunity to review and comment on any mitigation measures proposed to limit the adverse effect.	The regulations at 36 CFR 800.4 require the NRC staff to continue to consult with the SHPO and/or THPO, Tribes, and other consulting parties to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties. Further, 36 CFR 800.4(c)(1) states, in part, that the agency shall acknowledge that Tribes possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them. The ISG appropriately reflects these requirements.
2-4	If field surveys are going to be performed, the ISG should include language that field surveys "... shall be reasonable in scope and duration and be strictly limited to the effort required to complete the field work within a reasonable interval of time."	Field surveys are not required by the regulations at 36 CFR 800. The ISG was, however, revised to explain that if it is determined that a field survey will be conducted, the scope, level of effort, and duration will be determined in with input from the consulting parties.
2-5	The ISG should include guidance on fees. The NRC should keep in mind that the purpose of Section 106 is to provide Tribes the opportunity to get their interests and concerns before the NRC and	36 CFR Part 800 allows a federal agency to authorize an applicant to initiate Section 106 consultation in a specific project provided that the agency first notifies the relevant SHPO/THPO and the ACHP in writing. However, the federal agency remains

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	<p>allow them to advocate the outcome with regard to areas of historical significance to Tribes which is through consultation and does not require approval. According to the ACHP (fee guidance) when the NRC or applicant is seeking the views (i.e., consultation) of a Tribe to fulfill the NRC's legal obligation to consult with the Tribes under specific provision of ACHP's regulation, the agency or applicant is not required to pay the Tribe for providing its views. If payment is requested for any aspect of tribal or other consulting party participation, the NRC as the federal agency has met its obligation and is free to move to the next step in the Section 106 process.</p>	<p>responsible for all Section 106 consultations with Tribes. An agency may not delegate consultation with Tribes to an applicant unless the affected Tribes have agreed to such an arrangement in writing in advance.</p> <p>Although the federal agency or license applicant/licensee is not required to pay consulting parties for their participation in Section 106 consultation, there is no prohibition against third parties (e.g., license applicant or licensee) paying and reimbursing Tribes for their participation in activities related to identification of historic properties of religious and cultural significance to them such as tribal field surveys. Such payments and reimbursements could facilitate tribal participation and timely completion of identification efforts.</p>
2-6	<p>In a letter dated January 6, 2012 to NRC, the General Counsel of the NMA stated: "...The UR [uranium recovery] industry recognizes that NRC has obligations under the Section 106 of the NHPA, in that NRC must attempt to identify historic properties within the APEs for proposed UR facilities. As the ACHP regulations implementing NHPA Section 106 explain, the agency needs to make a "reasonable and good faith effort," as opposed to exhaustive, effort to identify Indian Tribes to be consulted to determine existence of historic properties. To ensure a risk-informed, and frankly common sense approach to the Section 106 process, NRC must not ignore the "reasonable and good faith" clause and engage in exhaustive, expensive and resource intensive consultation efforts." WMA agrees with this statement. The ISG should more fully discuss what will be a "reasonable and good faith effort" so that the Section 106 process is not unnecessarily delayed.</p>	<p>The ISG appropriately references the 36 CFR Part 800 "reasonable and good faith effort" standard and the corresponding ACHP guidance, which may provide useful guidance on this matter (see sections 6.1.2 and 6.2.2 of the ISG).</p>

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2-7	<p>Section 6.1.3 of the draft ISG states, “If a party responds that it does not want to participate in the Section 106 process, or does not respond for an extended period, the NRC would discontinue sending it further information until the NRC staff receives a request (e.g., an email or phone call from an official to an NRC project manager) indicating the party wants to be a consulting party. In such cases, the NRC staff would start consulting with the party from the current step of the Section 106 process at the time of its request.” This language creates problems in that it fosters delay and lack of closure. A Tribe may decide not to be part of the process, only to decide to join the process at a later date, possibly at a point when the parties involved believe the process to be almost complete thereby delaying a conclusion. The process must include clearly defined deadlines and milestones including deadlines for when a group must decide whether to participate or not.</p>	<p>The ISG appropriately explains that “If a Tribe that attaches religious and cultural significance to historic properties requests in writing to be a consulting party, the NRC staff will designate the Tribe as one,” consistent with 36 CFR 800.3(f)(2). The ISG, however, explains that in cases where, after reaching out to a party without receiving a response, and the party requests to join the consultation after the Section 106 process started, the NRC staff would start consulting with the party from the current step of the Section 106 process at the time of the request.</p>
2-8	<p>There is no requirement for field surveys, let alone utilization of the open-site approach, as the sole source for identification and should not automatically be referred to when leased land holdings are on private property. These private land holdings held by uranium recovery license applicants may be lands leased from individuals who expressly forbid individuals other than company employees from entering upon their property. These leases may contain conditions that limit access only to very select groups of individuals. In such a situation, how would tribal members be able to access the lands to perform surveys? This could create an untenable situation.</p>	<p>The draft ISG included a brief discussion about the open-site survey approach as an approach that could be considered and used as a starting point for discussions in developing the methodology to be used in field surveys, but not as the sole source for identification of historic properties. Section 6.2.2.1 of the ISG was revised to remove the discussions about an open-site survey because the approach chosen for conducting survey fieldwork will be developed taking into consideration the scope, nature, and intensity of the undertaking, and input from the consulting parties.</p> <p>The leases between the private landowners and license applicants/licensees are solely the responsibility of the license applicant/licensee and landowner. License applicants and licensees are responsible for obtaining the necessary permission</p>

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	Also, private landowners have exclusive rights to any artifacts found on their land and that the Archaeological Resources Protection Act covers public lands to "... include lands owned and administered by the United States as part of the National Park Service, National Wildlife Refuge System or National Forest System; all other lands to which fee title is held by the United States; Indian lands; land held in trust by the United States; and land subject to the restriction against alienation imposed by the United States." It does not include private lands. The ISG should expressly address the issue of field surveys on private lands and issues related to the completion of the process in the event that private landowners forbid access by tribal survey teams.	for access to the site for Section 106 activities such as site surveys, if needed. Further, private landowners can be consulting parties as explained in section 6.1.2 of the ISG. In addition, 36 CFR 800.2(c)(2)(ii) requires the agency official to consult with any Tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking. The requirement applies regardless of the location of the historic property.
2-9	The draft ISG cites 36 CFR 800.1(a)(2), which is incorrect and should be 36 CFR 800.2(a)(2). While there is no requirement for notification when agencies decide on lead agency arrangements, it would be a best practice to notify the consulting parties of the decision. Without that designation early in the process roles and responsibilities tend to become blurred.	Section 6.1 of the ISG was revised to reflect the correct regulation, 36 CFR 800.2(a)(2), and to recommend that the NRC staff inform consulting parties when an agency has been designated as lead.
2-10	The ISG should clearly state that these National Register of Historic Places (NRHP) eligibility criteria will be stringently interpreted.	Section 6.2.3.1 of the ISG appropriately discusses the criteria that must be used in evaluating the eligibility of properties for listing in the NRHP.
2-11	Applicants are noted to be invited signatories and as such are afforded the flexibility to request amendments [800.6(c)(2)(i)]. The ISG should provide guidance on how a request for an amendment will be dealt with such that the applicant is not sidestepped in the process.	The process for amending an MOA or a PA would be typically discussed in the MOA or PA itself. The ISG has been revised to provide this clarification.
2-12	The NRC should consider documents and programs from other agencies such as the Bureau of Land	The ACHP and CEQ's NEPA and NHPA handbook may provide useful guidance about the coordination of the NEPA and NHPA

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	Management's (BLM) "Programmatic Agreement Among the BLM, ACHP, and the National Conference of State Historic Preservation Officers Regarding the Manner in Which BLM will Meet its Responsibilities under the National Historic Preservation Act" dated February 2012, and the ACHP and CEQ's "NEPA and NHPA - A Handbook for Integrating NEPA and Section 106."	Section 106 reviews and has been included in the references section of the ISG, section 7. Other federal agencies' guidance documents may provide useful guidance. The reference section of the ISG lists guidance documents published by the National Park Service, for example.
2-13	An agency is allowed, in some circumstances to delegate to its applicants the responsibility to initiate consultation pursuant to the regulations; however, consultation does not apply to the initiation of consultation with Tribes unless expressly authorized by the Tribe to do so. Tribes may choose to meet with applicants that would like to initiate Section 106 early in project planning, but they are not required to do so. The NRC cannot unilaterally delegate their tribal consultation responsibilities to an applicant nor presume that such discussions substitute for agency tribal consultation responsibilities. This issue should be clearly discussed in the ISG.	Appendix A of the ISG encourages licensees and license applicants to reach out to potential consulting parties as early as possible to gather input that can be used to develop the license application and associated environmental report. Appendix A does not require or direct the licensee or license applicant or the Tribe to engage with each other.
2-14	It was discussed in the Draft Tribal Protocol Manual when it provided a historical perspective on relationships with the Tribes from 1608 to the present, a description of the government-to-government relationship that exists between the NRC and the Tribes. This ISG should be better coordinated with other existing NRC documents.	The ISG was revised to reference the NRC's Tribal Policy Statement published in the <i>Federal Register</i> on January 9, 2017, and Tribal Protocol Manual (NUREG-2173, Revision 1). The NRC staff's interactions and outreach activities with Indian Tribes will be informed by the Tribal Policy Statement and this ISG.
2-15	License applicants are required to submit information on historic and cultural resources of significance to Tribes, in addition to archeological resources per NUREG-1569 and NUREG-1748. It may be helpful to cite the requirements in this guidance to avoid duplicative work.	As discussed in the ISG, the NRC staff plans to revise the applicable sections of NUREG-1748 to include the guidance in this ISG.

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2-16	Thompson & Pugsley, LLC has previously discussed a PA as a logistical mechanism that could assist in the Section 106 process. It would be helpful if the NRC explored the idea of a PA with Tribes as early involvement.	The NRC staff conducts outreach with Tribes as early as possible. The undertaking, however, does not become subject to the Section 106 review until NRC receives a formal application.
North Dakota State Historic Preservation Officer		
3-1	Under "Surveys Conducted Prior to License Application Submission," on page A-2 of the draft ISG, you may consider mentioning that individual states may have regulations regarding who can survey in their state.	Section 6.2.2.1 of the ISG recognizes that states might have survey standards and guidelines that should be taken into consideration. Appendix A of the ISG, however, was revised to clarify this too.
Scott Kamber		
4-1	Section 6.1, paragraph 4, of the draft ISG states the NRC staff may notify potential consulting parties to inform them of the possible licensing request prior to receiving the license application. I do not believe early notification is necessary or prudent. The NRC should wait until the application has been officially submitted before they notify consulting parties. As stated in Section 6.1.1, paragraph 1 of the draft ISG, the federal undertaking does not occur until the NRC received an application requesting a licensing action. Therefore, early notification is not necessary.	Early notification to potential consulting parties is not required; however, it is a beneficial step that can facilitate the Section 106 consultation process.
4-2	Section 6.1.3, paragraph 2, of the draft ISG states, "If a party, does not respond for an extended period, the NRC would discontinue sending it further information." The term "extended period" should be defined and not exceed 12 months.	The term "extended period" would be assessed based on the nature, scale, and scope of the undertaking in a reasonable and good faith manner.
4-3	Section 6.2.3, "Surveys," of the draft ISG discusses the need for tribal surveys. However, many tribal sites do not meet standard definitions for prehistoric or historic sites under the NRHP and cannot be scientifically documented in accordance with SHPO site standards. Therefore, all open sites identified	The criteria for evaluating properties for eligibility to the NRHP are found in 36 CFR 60.4, "Criteria for evaluation." Section 6.2.3.1 of the ISG appropriately references this criteria. The ISG also references the National Register Bulletin 38, "Guidelines for Evaluating and Documenting Traditional Cultural Properties," which may provide useful guidance about evaluating properties

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	as a result of a tribal survey must comply with SHPO site standards and must provide scientific evidence of the existence. This point should be clarified in the ISG.	being considered as traditional cultural properties. Finally, section 6.2.3.2 of the ISG recognizes that SHPO's eligibility documentation guidelines should be considered.
4-4	Section 6.2.3, "Surveys," of the draft ISG discusses the need for tribal surveys. The ISG should acknowledge that many projects are located on private lands and that some landowners may not allow tribal surveys to be conducted. The NRC should discuss access with the landowner, but they should not attempt to force the landowners to provide access for tribal surveys.	Section 6.1.2 of the ISG appropriately discusses that private landowners can be consulting parties. In addition, neither NHPA, NEPA, nor NRC regulations require that a field survey be conducted. However, 36 CFR 800.2(c)(2)(ii) requires agencies consult with any Tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking. The requirement applies regardless of the location of the historic property.
4-5	Section 6.2.3, "Surveys," of the draft ISG discusses the need for tribal surveys. However, the guidance does not discuss who is expected to pay for such surveys. Tribal surveys are not required by the NHPA or any subsequent regulations and as such applicants should not be forced for pay for a survey that is not required by the NHPA.	Although neither the agency nor applicant are required to pay consulting parties for their participation in Section 106 process, there is no prohibition against third parties (e.g., license applicants/licensees) paying and reimbursing Tribes for their participation in activities related to identification of historic properties such as field surveys. Such payments and reimbursements could facilitate tribal participation and timely completion of identification efforts.
4-6	Section 6.2.3, "Surveys," of the draft ISG discusses the need for tribal surveys and states that the U.S. Department of Interior has professional qualification standards. However, section 6.2.3 of the draft ISG does not state that tribal surveyors must meet the U.S. Department of Interior's professional qualification standards. The NRC should ensure that all tribal surveyors meet the Department of Interior's professional qualification standards and they must be permitted through the State SHPO where the project is located.	In accordance with the comment letter submitted by the ACHP to the NRC in response to the draft ISG, the ACHP explained that 36 CFR Part 800 acknowledges the special expertise possessed by Tribes in assessing the eligibility of historic properties that may possess religious and cultural significance to them (regardless of whether or not such Tribes and organizations meet the Secretary's qualification standards).
National Mining Association, NMA		
5-1	The general tone of the draft ISG indicates an ongoing level of indecisiveness on NRC's part and leads NMA to believe that future Section 106 efforts	The scope, complexity, and duration of the Section 106 process can vary from project to project and, therefore, are determined taking into consideration factors such as the scope and

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	undertaken after finalization of this ISG may be just as burdensome to the applicant as those undertaken on the first five new 10 CFR Part 40 uranium recovery licenses issued since 2011. The NRC staff should revise the ISG to include timeframes for the various steps in the consultation process to provide a reasonable level of assurance that future Section 106 processes will be handled in an effective and efficient manner.	complexity of the licensing action and location of the proposed licensed activity. The ISG, however, identifies goals with respect to completion of the different steps in the Section 106 process, which provide an appropriate level of flexibility.
5-2	The ISG should omit use of the word “should” and replace it with the word “will” to demonstrate that the ISG is NRC policy and will be followed by the NRC project managers and consultants.	The ISG is a guidance document and does not impose regulatory requirements. In guidance documents, the NRC staff generally reserves use of the terms “will” and “shall,” as described in the comment, to descriptions of regulatory or statutory requirements.
5-3	The ISG should acknowledge that the Section 106 regulations provide for the agency to delegate Section 106 responsibilities to the applicant, while remaining responsible for all required findings and determinations, and that such delegation may be appropriate in certain circumstances (such as where some or all of the consulting parties agree to the delegation).	Appendix A of the ISG encourages licensees and license applicants to reach out to potential consulting parties as early as possible to gather input that can be used to develop the license application and associated environmental report. Appendix A of the ISG was revised to refer licensees and license applicants to the ACHP’s Section 106 Applicant Toolkit as this document may provide useful guidance for licensees and license applicants as they prepare applications for NRC licensing actions.
5-4	The ISG should go beyond mere recitation of the regulatory requirements and provide specifics as to how and when NRC will comply with the regulations. For example, the draft ISG simply states that “NRC staff will seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties” without providing any guidance on how this will be accomplished.	The ISG provides the appropriate level of flexibility so that the NRC staff can determine the scope, complexity, and duration of the Section 106 reviews, including level of involvement of the public, consistent with the scope and complexity of the undertaking.
5-5	At a minimum, the ISG should make a favorable reference to the ACHP guidance on integration of NEPA and the NHPA and encourage the NRC staff to make use of this guidance in coordinating the two reviews.	The ACHP and CEQ guidance document, “NEPA and NHPA: A Handbook for Integrating NEPA and Section 106,” which may provide useful guidance about the coordination of the NEPA review and Section 106 review, has been added to the references in section 7 of the ISG.

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5-6	The ISG gives the NRC staff unreasonable amounts of time to initiate and complete various steps in the process (e.g., 14 months/6 months) to fulfill its responsibilities, while noting that SHPO and the ACHP have tight timeframes (e.g., 30 days).	The timeframes established for each step of the Section 106 review are described as goals rather than strict due dates. Each licensing action is different, and timeframes for completion of each step of the Section 106 review may vary. On the other hand, some of the timeframes identified in the ISG are established in the NHPA-implementing regulations found at 36 CFR 800.
5-7	The NRC sets forth no timeframes for potential consulting parties to signal their intent to participate (e.g., notify the NRC of their intent to participate within 60 days and, if no response is received, the NRC will make another attempt to involve the party, but if there still is no response within 15 days, the NRC should consider the party not to be interested). Failure to include such timeframes is further evidence of NRC's ongoing failure to assert control of NHPA issues in its licensing process.	The ISG provides the appropriate level of flexibility so that the NRC staff can determine the scope, complexity, and duration of the Section 106 reviews consistent with, for example, the scope and complexity of the licensing action. The ISG, however, explains that if a party responds that it does not want to participate in the Section 106 process, or does not respond for an extended period, the NRC would discontinue sending further information until the NRC staff receives a request indicating the party wants to be a consulting party. In such cases, the NRC staff would start consulting with the party from the current step of the Section 106 process at the time of the request.
5-8	The opening explanation of NRC's regulatory responsibilities and program is inadequate and poorly organized (e.g., the second and third paragraphs under section 6.1 of the draft ISG should be moved to the first page after explanation of NRC authority and process). The NRC should include in this guidance a complete explanation of how the Atomic Energy Act defines NRC's regulatory program and should utilize language from a variety of documents already in its possession such as NUREG-1910 and its supplements.	The ISG references and describes the NRC's authority, regulations, and guidance documents related to the licensing of uranium recovery activities at an appropriate level.
5-9	In several instances, there have been allegations levied against the Section 106 process conducted by the NRC staff from a legal perspective such as the requirements to satisfy NEPA and how that process is conducted in coordination with or parallel to the Section 106 process. The NRC staff must	Neither the regulations nor the ISG require that a federal agency coordinate its NEPA reviews with its Section 106 reviews. The ISG, however, encourages such coordination as a way to conduct the licensing review in a more effective and efficient manner.

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	take care to properly address legal requirements. The NRC staff also must provide a complete rundown of NHPA requirements at 36 CFR Part 800 and how they are integrated into the NRC staff's environmental review requirements, including NUREG-1748 and subsequent 10 CFR Part 51 NEPA reviews.	
5-10	A term generally associated with the Section 106 process and that has been actively debated in both the regulatory and litigation context is "government-to-government." Interested parties, including but not limited to, Tribes, licensees/license applicants, the NRC, and the ACHP all appear to have different definitions of this term. However, "government-to-government" interaction during the Section 106 process is the hallmark of the relationship between the lead federal agency and tribal governments. Thus, NRC must ensure that it is clear on what constitutes a "government-to-government" interaction so that all interested stakeholders understand NRC's position on this issue and there is no question should a party seek to litigate the issue.	The NRC's Tribal Policy Statement discusses the government-to-government relationship between the NRC and the Tribes. The ISG was revised to reference the NRC's Tribal Policy Statement published in the <i>Federal Register</i> on January 9, 2017, and Tribal Protocol Manual (NUREG-2173, Revision 1). The NRC staff's interactions and outreach activities with Indian Tribes will be informed by the Tribal Policy Statement and this ISG.
5-11	The NRC should actively solicit input specifically from the ACHP on development of this ISG. Section 106 processes, including agreement documents such as PA and MOA that are executed by the ACHP are considered to be prima facie evidence that an agency's responsibilities for the Section 106 process have been satisfied. Thus, it stands to reason that substantial input, if not tacit endorsement, of the tribal guidance by the ACHP would make the guidance much more viable in the eyes of the license applicant/licensee and potential consulting parties.	The NRC staff sought input from the ACHP on this ISG and has responded to the comments provided by this federal agency in this Appendix B. This ISG, however, only provides guidance and does not impose regulatory requirements.

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5-12	The NRC should develop an online database where documents developed pursuant to the Section 106 process can be accessed by the consulting parties and include a requirement in the guidance for such documents to be made available by NRC. A centralized repository would provide a more transparent regulatory process, would provide a record of NRC's consultation efforts, and would facilitate NRC's compilation of the administrative record. Concerns with confidentiality could be addressed in a variety of ways, including restricting access to some or all of the database.	The NRC's official recordkeeping system that provides access to the agency's official records is the Agencywide Documents Access and Management System or ADAMS. All publicly available documents included in the administrative record supporting a licensing decision can be found in ADAMS. The ISG was revised to reference the NRC staff guidance titled, "Staff Guidance on Withholding Sensitive Information About Historic Resources in Accordance with National Historic Preservation Act."
5-13	Section 6.1 of the draft ISG states that the NRC staff's anticipated completion of the initiation of the Section 106 process (i.e., six months) is far too long. NMA believes this period should be no longer than 60 days.	The timeframes established for each step of the Section 106 review are described as goals rather than strict due dates. Each licensing action is different, and timeframes for completion of each step of the Section 106 review may vary.
5-14	The NRC staff needs to be specific as to what the "initiation" of the Section 106 process entails (see section 6.1 of the draft ISG).	Section 6.1.1 of the ISG was revised to provide additional information regarding when an NRC licensing or regulatory action would be subject to the Section 106 review.
5-15	The NRC staff should explore ways to initiate the Section 106 process prior to the actual submission and acceptance of a license application. There are no legal requirements precluding the NRC staff from initiating the process upon reasonable assurance that a license application will be submitted. Moreover, during a pre-submission audit and the post-submission acceptance review, the NRC staff still bills the license applicant/licensee. Thus, there are no legal or resource issues associated with starting the process earlier, and it will be the license applicant/licensee that would assume the financial risk of starting the process earlier.	Section 6.1.1 of the ISG appropriately discusses the determination of an undertaking. This section also explains when the NRC licensing action would be subject to the Section 106 process (i.e., after receipt of a license application). The ISG, however, describes opportunities for both the NRC staff and license applicants/licensees to conduct outreach prior to the submittal of a license application.
5-16	The NRC staff should provide a complete discussion of what 10 CFR Part 51 NEPA	The ISG explains that it is the NRC's goal to coordinate the Section 106 review with the NEPA review and to use the NEPA

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	documents will trigger the Section 106 process and why. Given that uranium recovery licensing actions may encompass several types of Part 51 documents (i.e., environmental impact statement, environmental assessment), a further discussion of this should be provided. This might also be an appropriate place to discuss how NEPA and the Section 106 process can be integrated.	documents (e.g., environmental impact statement, environmental assessment) to document the Section 106 determinations and findings.
5-17	The identification of potential consulting parties should only refer to “federal agencies” as states are not subject to the NHPA. Only the SHPO’s office is a state-based office that should be identified here.	The participants in the Section 106 process are listed in 36 CFR 800.2 and can include parties other than federal agencies. For example, certain individuals and organizations with a demonstrated interest in an undertaking can participate in the Section 106 review as consulting parties.
5-18	The NRC (rather than “the federal agency”) should determine whether the undertaking takes place on federal, state, tribal, and/or private property as this determination will trigger differing requirements in the Section 106 process and will implicate different potential issues.	The NRC is not the project proponent and, therefore, it is not up to the NRC to determine where the undertaking takes place. The license application should clearly describe the geographic location of the proposed activity to be licensed including whether the lands are public, private, state-owned, tribal, etc.
5-19	Projects taking place on private property may result in issues related to access for tribal surveys and other types of identification efforts.	Private landowners can be consulting parties as explained in section 6.1.2 of the ISG. In addition, 36 CFR 800.2(c)(2)(ii) requires the agency official to consult with any Tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking. The requirement applies regardless of the location of the historic property.
5-20	Footnote 13 states that NHOs will not be further addressed in the ISG, but the guidance continues to reference to NHOs.	The ISG only referenced NHOs in the paragraph right after (former) footnote 13 (now footnote 20) for completeness. The remaining references to NHOs have now been removed.
5-21	Similar to the list provided for identifying Tribes, the ISG should identify specific means (e.g., direct mailing to neighboring landowners within X miles of the APE, publication in local newspapers, etc.) by which the public will be notified. The ISG should also identify specific points in time during the Section 106 process when the public will be notified	The ISG provides the appropriate flexibility regarding the involvement of members of the public consistent with 36 CFR 800.2(d) in that the NRC staff can determine the scope, complexity, and duration of the Section 106 reviews, including level of involvement of the public, consistent with the scope and complexity of the undertaking.

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	and provided an opportunity to consult, rather than simply making a generalized statement.	
5-22	The draft ISG includes inexact timeframes for completion of activities associated with the Section 106 process. The identified affected parties should bear the responsibility of contacting the NRC to participate in the Section 106 process within 30 days after the NRC attempts to contact them. The NRC should not continue attempts to consult after a set timeframe at the license applicant's/licensee's expense. The vague term "extended period" is used and is a good example of where NRC needs to take the lead and define the regulatory landscape with clear procedures and timeframes.	The timeframes established for each step of the Section 106 review are described as goals rather than strict due dates. Each licensing action is different and timeframes for completion of each step of the Section 106 review may vary. The ISG appropriately explains that "If a Tribe that attaches religious and cultural significance to historic properties requests in writing to be a consulting party, the NRC staff will designate the Tribe as one," consistent with 36 CFR 800.3(f)(2). The ISG, however, explains that in cases where, after reaching out to a party without receiving a response, and the party requests to join the consultation after the Section 106 process started, the NRC staff would start consulting with the party from the current step of the Section 106 process at the time of the request.
5-23	The NRC's reference to a potential 14-month period for completion of identification efforts is unreasonable (section 6.2 of the draft ISG). The NRC is given a Class III archaeological survey to facilitate initial identification efforts, which goes a long way toward identifying potential historic and cultural resources. Then, NRC can set a reasonable timeframe for conducting tribal field/traditional cultural property surveys, if requested, which consulting parties should consider binding absent requests for extension based on good cause shown. Reasonable timeframes also may allow the NRC to include much larger historic and cultural resource databases in its draft 10 CFR Part 51 document for public comment, thus alleviating any complaints from interested stakeholders regarding opportunities to comment.	<p>The timeframes established for each step of the Section 106 review are described as goals rather than strict due dates. Each licensing action is different and timeframes for completion of each step of the Section 106 review may vary.</p> <p>Although a Class III archaeological field investigation might have been conducted, such surveys will not necessarily identify properties of cultural and religious significance to Tribes or ascribe significance. Because Tribes have special expertise in identifying and evaluating properties of significance to them, the NRC staff will consider the Tribes' input in determining the scope of the identification efforts, and the type of survey, should one be conducted.</p> <p>Finally, this ISG is a guidance document and does not impose regulatory requirements.</p>
5-24	The suggestion in the first paragraph of section 6.2 of the draft ISG that identification of historic properties must be completed prior to issuance of	The ISG does not require the NRC staff to complete the identification of historic properties step prior to the issuance of the draft NEPA document but sets a goal. Each licensing action is

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	the draft NEPA document should be deleted. While keeping the two reviews coupled may be possible in many situations, for those in which it is not, delaying issuance of the draft NEPA document until all historic properties have been identified would result in unreasonable delay at the applicant's expense. There is no requirement in NEPA that all historic properties be identified in the draft NEPA document.	different and the timeframes for completion of each step of the Section 106 review may vary. Also, the ISG does not require that the NRC staff identify all historic properties but follows the reasonable and good faith standard.
5-25	The reference to "other statutes" in section 6.2 of the draft ISG should be further clarified in a manner consistent with the NRC staff discussions in 10 CFR Part 51 environmental review documents. The NRC staff should lay out all associated statutes and explain their applicability.	The ISG states that "other statutes" protect confidential information if the historic and cultural resources are located on federal lands. Because each licensing action is different, it is not feasible for the NRC staff to explain all statutes that might apply. It is the licensee's/license applicant's responsibility, consistent with 10 CFR 51.45(d) to provide a list of all Federal permits, licenses, approvals and other entitlements which must be obtained in connection with the proposed action and describe the status of compliance with these requirements.
5-26	Identification of the APE should include input from the license applicant. The applicant is often in the best position to understand the direct and indirect impacts of the project. The ISG should also acknowledge that the APE is not static and may be revised during the Section 106 process based upon new or changed information.	Section 6.2.1 of the ISG addresses the factors to consider when determining the APE and potential sources of information including the license application.
5-27	In section 6.2.2 of the draft ISG, there is no mention of the "government-to-government" status of consulting parties involved such as Tribes, federal agencies, SHPO/THPOs, tribal contractor, etc.	The ISG was revised to reference the NRC's Tribal Policy Statement published in the <i>Federal Register</i> on January 9, 2017, and Tribal Protocol Manual (NUREG-2173, Revision 1), which address the government-to-government relationship with Tribes. The NRC staff's interactions and outreach activities with Indian Tribes will be informed by the Tribal Policy Statement and this ISG.
5-28	Throughout the draft ISG, and including the second paragraph of section 6.2.2, the NRC needs to make clear that confidentiality concerns do not excuse a consulting party from providing NRC the information	Confidentiality does not prohibit or prevent consulting parties from providing information to the NRC staff during the Section 106 consultation process but provides protection of certain information about historic properties. Eligibility determinations will be made

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	it needs to determine whether a cultural resource is eligible for the NRHP. If NRC cannot obtain adequate information of eligibility after reasonable consultation, then the cultural resource will be found ineligible.	using the information available and provided to the NRC staff through consultation.
5-29	Consulting parties cannot inform the NRC staff of the presence of historic properties. The third paragraph of section 6.2.2 of the draft ISG should be revised to remove this sentence “After participating in site visits, consulting parties may be able to inform NRC staff of the presence of cultural resources within the direct APE...” The ISG should state that NRC will only consider effects to known historic properties within the indirect APE, and survey efforts will be limited to the direct APE.	The purpose of the Section 106 consultation process is to gather information to identify historic properties and assess adverse effects with from the undertaking. In addition, the scope of the identification, whether a survey will be conducted, and the scope of the survey will be determined in consultation with the consulting parties.
5-30	The discussion in section 6.2.3 of the draft ISG is far too limited and needs to be supplemented. The NRC should include a discussion of surveys in the context of the land ownership status of properties within the APE, number of potential participants in surveys, finances/compensation, and other aspects of the survey process from a lessons-learned review of recent “open-site” surveys. The ISG assumes that a survey is required for every project and that is false. The regulations call out a survey as one potential option in obtaining information.	The ISG does not assume that a survey is required for every project; rather, it states that whether a field survey is conducted will be determined based on factors discussed in section 6.2.2.1 of the ISG. Section 6.2.2.1 of the ISG was revised to remove the discussions about an open-site survey because the approach to be chosen for conducting survey fieldwork will be developed by taking into consideration the scope, nature, and intensity of the undertaking, and the input from consulting parties. Because Tribes have special expertise in identifying and evaluating properties of significance to them, the NRC staff will consider the Tribes’ input in determining the scope of the identification efforts, and the type of survey, should one be conducted.
5-31	The purpose of Section 106 is to provide Tribes the opportunity to get their interests and concerns before the NRC and allow them to advocate the outcome. When the NRC or applicant is seeking the views of an Indian Tribe under specific provision of ACHP’s regulation, the agency or applicant is not required to pay the Tribe for providing its views. If payment is requested for any aspect of tribal or	Although the federal agency or license applicant/licensee is not required to pay consulting parties for their participation in Section 106 consultation, there is no prohibition against third parties (e.g., license applicant/licensee) paying and reimbursing Tribes for their participation in activities related to identification of historic properties of religious and cultural significance to them such as tribal field surveys. Such payments and reimbursements would

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	other consulting party participation, the NRC as the federal agency has met its obligation and is free to move to the next step in the Section 106 process.	facilitate tribal participation and timely completion of identification efforts.
5-32	Section 6.2.3 of the draft ISG should more explicitly define what “findings of the survey” need to be included in the survey report. The ISG should also state that NRC will provide a template form to all survey participants that will be completed for each cultural resource identified, and be designed to elicit information relevant to the criteria for eligibility in 36 CFR 60.4, “Criteria for evaluation,” with special consideration given to the type of information needed to evaluate eligibility of tribal sites.	Section 6.2.2.1 of the ISG describes the information that should be included in a survey report. The ISG also references the U.S. National Park Service’s Bulletin 15, “How to Apply the National Register Criteria for Evaluation,” which may provide useful guidance in applying the criteria.
5-33	Although the draft ISG states that tribal recommendations on the eligibility of tribal sites for listing on the NRHP is of “great value” to the NRC, tribal sites are simply a subset of cultural resources, and the guidance should make clear that the views of all consulting parties will be considered in determining whether cultural resources identified by the Tribes satisfy the regulatory criteria for evaluation.	The ISG appropriately references and follows 36 CFR 800.4(c)(1), which states, in part, that the agency shall acknowledge that Tribes possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.
5-34	The suggestion in the ISG that tribal survey teams should provide in their survey reports recommendations on possible measure(s) to limit adverse effects on “historic properties” puts the cart before the horse (section 6.2.3 of the draft ISG). Attempting to combine steps at an early stage risks confusion, for example, between the boundaries of the cultural resource and the Tribes’ proposed buffer. Moreover, requesting that the Tribes provide both an eligibility determination and proposed avoidance measures following the survey improperly suggests that the Tribes’ opinion as to	The ISG serves as a guidance document and it does not require any specific action from any one party. The ISG, however, states that the NRC staff will seek the Tribes’ input on eligibility determinations, adverse effects, and potential measures to avoid or mitigate effects because Tribes possess special expertise in identifying and evaluating properties of significance to them.

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	the NRHP eligibility of the cultural resource will simply be accepted carte blanche by the NRC.	
5-35	Section 6.2.4 of the draft ISG is a prime example of where NRC should impose reasonable 30- and/or 60-day time frames on its own actions, similar to those imposed on the SHPO/THPO/ACHP and other consulting parties.	Each licensing action is different and timeframes for completion of each step or activity of the Section 106 review may vary and, therefore, the ISG does not impose strict due dates, other than those identified in the regulations at 36 CFR 800.
5-36	The suggestion in the first paragraph of Section 6.3 of the draft ISG that the assessment of adverse effects will be tied to issuance of the draft NEPA document should be deleted. There is no requirement in NEPA that all historic properties be identified in the draft NEPA document, and the NRC should not insist on coupling the reviews at the applicant's time and expense.	The ISG does not require the NRC staff to complete the assessment of adverse effects within six months of the issuance of the draft NEPA document but establishes timeline goals. Each licensing action is different and the timeframes for completion of each step of the Section 106 review may vary.
5-37	In discussing visual effects, NRC should also consider whether the visual effects will be temporary or permanent, and whether the landscape has previously been altered from its original form.	As discussed in section 6.3 of the ISG, the NRC staff will follow 36 CFR 800.5 in determining adverse effects.
5-38	Section 6.3 of the draft ISG should acknowledge that adverse effects from noise and/or emissions are not anticipated from in situ uranium recovery projects.	The ISG serves as a guidance document. Site-specific effects will be assessed based on the scope of the specific licensing action.
5-39	Section 6.3 of the draft ISG discusses what happens should NRC determine there are no adverse effects but does not expressly identify the steps should NRC determine there are adverse effects.	Section 6.3 of the ISG discusses the assessment of adverse effects, while section 6.4 of the ISG discusses resolution of adverse effects upon making such determination.
5-40	The suggestion that resolution of adverse effects must be completed prior to issuance of the final NEPA document in section 6.4 of the draft ISG should be deleted. While keeping the two reviews coupled may be possible in many situations, for those in which it is not, delaying issuance of the	The ISG establishes timeline goals and does not require that the NEPA and Section 106 reviews be coupled. The scope, complexity, and duration of the Section 106 process can vary from project to project and, therefore, are determined taking into consideration factors such as the scope and complexity of the licensing action.

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	final NEPA document until resolution of adverse effects would result in unreasonable delay at the applicant's expense.	
5-41	The NRC should say up front that the license applicant is a mandatory party to a Section 106 agreement document. Furthermore, there should also be a discussion in the guidance regarding how NRC will deal with amendments to an MOA or a PA.	<p>The role of the license applicant/licensee is appropriately described in the ISG consistent with the definitions of the signatories in the 36 CFR 800 regulations.</p> <p>The process for amending an MOA or a PA would be typically discussed in the MOA or PA itself. The ISG has been revised to provide this clarification.</p>
5-42	The NRC's discussion of PAs should involve a discussion of how ISR projects are "phased" by nature, so "phased identification" within the confines of the Section 106 process, which is expressly permitted in ACHP regulations and endorsed by the Commission in the Hydro Resources, Inc. case, is appropriate.	The ISG serves as a guidance document and does not impose regulatory requirements. The scope, complexity, and duration of the Section 106 process can vary from project to project and, therefore, are determined taking into consideration factors such as the scope and complexity of the licensing action. Likewise, each PA will be tailored to the project-specific characteristics.
Rosebud Sioux Tribe		
6-1	All projects affecting homelands and traditional use territories of the Lakota, Dakota, and Nakota and their allies, where in situ uranium development has been planned and implemented, have had archaeological and historical research conducted as per requirements of Section 106. However, this research has proven to be inadequate to recognize the cultural sites and attendant historicity embodied within those sites relating to the current tribal groups. As designed, the process cannot interpret the site components without the living descendants of those who set the sites within a contextual landscape. By context, it is meant that those sites were and are not random settings within the geographical, topographical, and geological landscape; that is, positioning related to aspect, seasonality, migration (human, avian, and animal),	The NRC uses a variety of methods to identify Tribes that attach religious and cultural significance to historic properties that could be affected by the undertaking (see section 6.1.2 of the ISG). The ISG also acknowledges the special expertise the Tribes possess in identifying and evaluating properties of significance to Tribes and the importance of their involvement during identification efforts.

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	watersheds, stone resources, defense, and astronomical.	
6-2	Individuals representing our tribal interest must be certified by one of the Tribes within the organizational structure of the Oceti Sakowin (Seven Council Fires). Individuals who profess knowledge and expertise, while valid for their own intents and purposes, do not represent the collective knowledge and interest of the Tribes culturally invested within the landscapes affected by uranium development. No Native persons hired individually by an environmental, archaeological, or appointed third party may represent our cultural and historical interest. Tribal Historic Preservation Programs must be contacted, informed, and consulted with concerning any research related to the interpretation of sites encountered. Upon being contacted, the Tribal Historic Preservation Programs will designate their tribal representative to participate in surveys, research, and consultation or a firm whom the Tribes have confidence in to legitimately represent our interest.	The NRC staff's practice is to contact the Chairman or President of the Tribe as well as the THPO or equivalent. It is at the discretion of the Tribe to select who will participate in any surveys or consultation with the NRC.
6-3	Planned projects to date have been remiss in their obligatory capacity and ability to address adverse effects to sites deemed culturally related and sensitive by the standards of integrity inculcated within tribal knowledge, historicity, custom, and continuity. Site assessment as currently defined by the National Register criteria A-D is inadequate in providing sufficient value(s) upon which protective measures, as it relates to cultural sites, can be applied.	Section 6.2.3.1 of the ISG states that, consistent with the regulations, the NRC staff will evaluate sites using the National Register criteria. In addition to meeting one of the criteria (A-D), the site must also exhibit integrity of location, design, setting, materials workmanship, feeling, and association to be deemed eligible. If sites are determined to be eligible, NRC staff would work with the appropriate Tribes to determine what protective measures are necessary. In this respect, the ISG acknowledges the special expertise the Tribes possess in identifying and evaluating properties of significance to Tribes, and the importance of their involvement during identification efforts including during eligibility determinations.

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6-4	<p>PAs and MOAs must be strongly constructed to ensure that areas of survey and sites within the APE of a project receive management and physical protections to address any sites being adversely impacted or affected.</p>	<p>As stated in section 6.4 of the ISG, all PAs and MOAs prepared by the NRC are done so in accordance with 36 CFR 800.6(b)(1), or (b)(2), and 36 CFR 800.6(c).</p>
6-5	<p>As per the Ft. Laramie Treaties of 1851 and 1868 between the U.S. Government and the Oceti Sakowin, the lands within these documents are still part of the physical and cultural interest areas of the Tribes. These lands are being directly affected by planned uranium projects and as such, Tribal Historic Preservation Programs and the THPOs or their appointees have the right of consultation and investigation of sites within an area that will be physically impacted by a planned project. Language supporting this comment is within the text of 36 CFR 800.2:</p> <ul style="list-style-type: none"> • Section 101(d)(6)(B) of the NHPA requires the agency official to consult with any Indian Tribe or NHO that attaches religious and cultural significance to historic properties that may be affected by an undertaking. *This requirement applies regardless of the location of the historic property. Such Indian Tribe or NHO shall be a consulting party. • The agency official shall ensure that consultation in the Section 106 process provides the Indian Tribe or NHO a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the 	<p>The ISG describes how to identify potential consulting parties including Tribes. Section 6.1.2 of the ISG specifically explains that Tribes frequently find properties of religious and cultural significance located on ancestral, aboriginal, or ceded lands that could be far from the Tribe's current location. Further, the ISG explains that Tribes will have a reasonable opportunity to identify concerns, advise on identification and evaluation, provide views on effects of the undertaking, and participate in the resolution of any adverse effects.</p> <p>Regarding the unique relationship with Tribes, the NRC's Tribal Policy Statement explains that the NRC exercises its trust responsibilities in the context of its authorizing statutes including the Atomic Energy Act, the Energy Reorganization Act of 1974, and the Uranium Mill Tailings Radiation Control Act of 1978. The NRC is an independent regulatory agency and as such does not hold in trust Tribal lands or assets or provide services to federally recognized Indian Tribes.</p>

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	<p>resolution of adverse effects. It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian Tribes and NHOs that shall be consulted in the Section 106 process.</p> <ul style="list-style-type: none"> The Federal Government has a unique legal relationship with Indian Tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian Tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets, or modifies tribal sovereignty, any treaty rights, or other rights of an Indian Tribe, or preempts, modifies, or limits the exercise of any such rights. 	
Cheyenne River Sioux Tribe		
7-1	<p>Archaeologists were never restricted with their survey methodology or amount compensated. Yet in reading the draft staff guidance, it seems this is the major concern by NRC, North Dakota State Historical Society, WMA, Anthony Thompson of Thompson & Pugsley, LLC, and NMA.</p>	<p>The ISG does not assume that a survey is required for every project; rather, it states that whether a field survey is conducted will be determined based on factors discussed in section 6.2.2.1 of the ISG. The approach to be chosen for conducting survey fieldwork will be developed taking into consideration the scope, nature, and intensity of the undertaking, and the input from consulting parties.</p> <p>Responses to comments on the draft ISG from the North Dakota State Historical Society, WMA, and the NMA are provided above.</p>
7-2	<p>The NHPA is that of protection and preservation. With the recent changes to the weather patterns, migration routes, quality of land, air, and water, the NRC should direct attention to the “affects” of projects rather than the permitting.</p>	<p>In addition to conducting a Section 106 review, the NRC staff conducts a safety review in accordance with the Atomic Energy Act and 10 CFR Part 20 and 40 regulations, and an environmental review in accordance with NEPA and 10 CFR Part 51 regulations. The NEPA environmental review considers potential impacts on different environmental resource areas including land use, air, water, and soils.</p>

Comment Summary		Response
7-3	The regulations explain tribal involvement. The NRC just needs to apply the opportunity equally in the identification and methodology of surveys. Yet the NRC sided with several uranium projects in the Northern Plains and followed advice from applicants, and the SHPO, to not fund tribal surveys. If you compensate archaeologists for surveys then compensate Tribes equally.	<p>The NRC is not involved during archaeological surveys conducted by licensees and license applicants prior to the submittal of a license application. As discussed in section 6.2.2.1 of the ISG, the NRC may determine that, as part of the Section 106 review, a field survey should be conducted to aid in identification of historic or cultural properties. In such cases, the NRC follows the Federal Acquisition Regulations to select contractors who would be involved in such surveys.</p> <p>Although the federal agency or license applicant/licensee is not required to pay consulting parties for their participation in Section 106 consultation, there is no prohibition against third parties (e.g., license applicant/licensee) paying and reimbursing Tribes for their participation in activities related to identification of historic properties of religious and cultural significance to them such as tribal field surveys. Such payments and reimbursements could facilitate tribal participation and timely completion of identification efforts.</p>
7-4	Recent ACHP guidance recommends cooperation and coordination with Tribes. With the comments I read I do not see Tribes getting full, equal treatment in the preservation and protection of OUR history/culture.	<p>The ISG acknowledges the special expertise the Tribes possess in identifying and evaluating properties of significance to Tribes and the importance of their involvement during identification efforts, assessment of adverse effects, and resolution of adverse effects.</p> <p>Responses to comments on the draft ISG from other commenters are provided above.</p>
7-5	For tribal involvement, identification of cultural resources (properties of cultural or religious significance, sacred sites, traditional cultural property, etc.), under the Section 106 process must also be considered from state to state. The NRC's compliance with the process is a "national" requirement and not catered to specific agencies, states, Tribes, regions or individual companies.	The NRC staff acknowledges its licensing actions are federal undertakings. During consultation, the NRC staff would work with each SHPO to identify the applicable requirements.

Comment Summary		Response
7-6	<p>The NRC commented on page 2, “Issues,” of the draft ISG that “...over the past several years, an increase in the number of licensing actions for in situ uranium recovery (ISR) facilities has resulted in an increase in NRC’s Section 106 activities. In addition, the complexity of the Section 106 reviews associated with the ISR licensing actions has grown significantly. As a result, the NRC staff decided to supplement the Section 106 guidance contained in NUREG-1784.” This statement is of concern as if this is to simplify the Section 106 process for NRC. In previous NRC projects, this seemed to be the major breakdown in consultation. The NRC is proposing to supplement the Section 106 guidance, which is not in the best interest of Tribes.</p>	<p>The NRC staff acknowledges the commenters concern with the development of guidance. However, the NRC staff finds that this ISG is necessary to enhance the guidance included in NUREG-1748. Furthermore, consistent with section 2 of the ISG, the guidance’s intent is mainly to assist the NRC staff in conducting Section 106 reviews. The NRC staff, however, recognizes that each consultation is unique and will be conducted accordingly.</p>
7-7	<p>The Sioux Tribes submitted proposals to conduct identification of cultural resources equal to the terms allowed by contracted archaeological companies. In the Wyoming ISR projects, the NRC informed the Tribes that the SHPO would not support funding any tribal identification. The NRC should not cater to individual states when following compliance to Section 106.</p>	<p>The State of Wyoming became an agreement state in September 2018, and therefore, the NRC no longer has jurisdiction over uranium milling activities in that state. However, for states within the NRC’s jurisdiction, if a party (e.g., SHPO) does not support funding the identification efforts there may be other options available to fund (i.e., a third party) a Tribe’s participation in identification activities of historic properties such as field surveys.</p>
7-8	<p>Page 2 and Page 4 respectively of the draft ISG states, “NHPA Section 106 requires federal agencies to take into account the effects of their undertakings on historic properties and allow the ACHP an opportunity to review and comment on the undertaking. The NRC must complete the Section 106 process before commencing or approving an undertaking” and “The NRC staff then evaluates whether the undertaking has the potential to affect historic properties. If the NRC staff determines that the undertaking does not have the potential to cause effects on historic properties, assuming</p>	<p>The ISG explicitly follows the Section 106 steps included in 36 CFR 800, Initiation, Identification Efforts, Assessment of Effects, and Resolution of Adverse Effects. The NRC staff, however, does not make any determination about sites of cultural and religious significance to Tribes without consultation of interested Tribes.</p>

Comment Summary		Response
	historic properties are present, no further consultation under Section 106 is necessary and the agency has complied with its Section 106 obligations.” The ISG states the first step of consultation is initiation followed by identification. Who in NRC can determine historic property for Tribes?	
7-9	Archaeologists have done no favors to Tribes in their determination and evaluations of tribal historic or cultural resources. Identification of historic properties is the responsibility of the agency official with direct or indirect jurisdiction over the undertaking. The regulation also require that the agency seek information from Tribes who may have knowledge of historic properties in the area.	If a licensee or license applicant submits Class III archeological investigation report as part of its license application, the NRC staff shares the report with the SHPO as well as Tribes for review. Additionally, the NRC staff acknowledges that identification is conducted through consultation with the appropriate Tribes that have cultural ties and knowledge of the area where the undertaking will take place.
7-10	Historic property, along with the other terms such as prehistoric or historic district, site, building, etc. also includes those of religious and cultural significance to Tribes. Federal agencies shall make a reasonable good faith effort in carrying out its effort to identify historic properties.	Section 6.2.2 of the ISG describes the process for determining the scope and level of effort of the agency’s identification efforts based on the nature, scale, and scope of the undertaking in a reasonable and good faith manner. The ISG also acknowledges the special expertise the Tribes possess in identifying and evaluating properties of significance to Tribes and the importance of their involvement during identification efforts. Section 6.1.2 of the ISG acknowledges that federal agencies are responsible for making a reasonable and good faith effort to identify historic properties in the Section 106 process.
7-11	The Tribe referenced several comments provided by the Wyoming Mining Association.	Responses to Jonathan Downing’s comment letter are provided above. See comment-responses 2-1, 2-2, 2-6, 2-7, 2-8, and 2-16.
7-12	The NRC licensing actions are national and not in favor of specific states. Each state has their own compliances to artifacts, which most have later been identified as associated funerary objects, which requires Native American Graves Protection and Repatriation Act.	The NRC staff acknowledges its licensing actions are federal undertakings. During consultation, the NRC staff would work with each state and its SHPO to determine the applicable requirements in that particular state.

Comment Summary		Response
7-13	Tribes have not been involved in the writing of history books in the United States. Events have now brought that opportunity with tribal involvement in the Section 106 process.	The NRC staff acknowledges that the Section 106 process gives the opportunity to Tribes to provide special expertise and knowledge about historical events.
7-14	If applicants and agencies can contract archeologists to perform identification of historical and cultural resources, then Tribes should have the same opportunity to be contracted in the identification of Native historical and cultural resources.	The NRC staff's acquisition process follows the Federal Acquisition Regulations for contracting work to outside vendors.
7-15	The open-site approach was used in previous NRC projects, ignoring the methodology submitted by Sioux Tribes. The NRC placed a dollar amount on how the identification was to be conducted, at the recommendations of the applicant and SHPO. The NRC has never limited archaeological firms in the amount they charge for identification of historic properties. Archeologists have conducted numerous surveys at their leisure and no restrictions for time or amount compensated. The Tribes, who accepted the "honorarium," were limited to an average of two weeks to conduct tribal surveys on 1,000+ acres. If the Sioux Tribes were allowed to conduct the survey today, on the terms submitted and rejected, there would be many discrepancies in the identification and determination of our cultural resources.	If a license applicant or licensee submits a Class III archeological investigation report as part of its license application, the archaeological work conducted is funded by the license applicant/licensee and not the NRC. Additionally, this archaeological work is typically conducted by licensees and license applicants prior to the submittal of the license application to the NRC.
7-16	The ACHP through recent guidance has recommendations of cooperation and coordination with Tribes. Several agencies have followed suggestions and read the United Nations Declaration of Rights of Indigenous Peoples Document.	The ISG references several ACHP guidance documents in section 7 such as (1) "Improving Tribal Consultation and Tribal Involvement in Federal Infrastructure Decisions" January 2017 and (2) "Section 106 Consultation Between Federal Agencies and Indian Tribes Regarding Federal Permits, Licenses, and Assistance Questions and Answers," which may provide useful guidance.

Comment Summary		Response
7-17	The National Park Service provided a 1-week training for their superintendents and park personnel on Section 106 Tribal Consultation in October 2014. When I was asked to comment on tribal consultation experiences I said “Do you want to hear the good, the bad, or the ugly?” Because just the mention of a federal agency or a representative of certain agencies or applicants, Tribes already know which of them are in “good faith effort.”	Section 6.2.2 of the ISG describes the process for determining the scope and level of effort of the agency’s identification efforts based on the nature, scale, and scope of the undertaking in a reasonable and good faith manner. The ISG also acknowledges the special expertise the Tribes possess in identifying and evaluating properties of significance to Tribes and the importance of their involvement during identification efforts.
7-18	The NRCs letter dated August 13, 2014 states, “... this guidance is primarily intended for the NRC staff, (specifically for uranium recovery licensing actions).” The question is “Where is the NRC in consultation with Tribes with the development of supplementing the Section 106 process?” Maybe Tribes should supplement the guidance of Section 106 specifically for their own involvement. But then it would not go well with politicians and millionaires who have personal interests/investment in extractive industries.	In recognizing the importance of involving potential consulting parties including Tribes, the NRC staff published the draft ISG for public review and comment. The NRC staff appreciates the Tribes that commented on the draft ISG.
7-19	36 CFR 800 is the guidance for conducting the Section 106 process for agencies. It just needs to be implemented equally between agencies, states, and Tribes. The commenter also noted the Section 106 process, as described in Subpart B of 36 CFR 800, consists of four steps: (1) Initiation of the Section 106 Process (36 CFR 800.3), (2) Identification of historic properties (36 CFR 800.4), (3) Assessment of adverse effects (36 CFR 800.5), and (4) Resolution of adverse effects (36 CFR 800.6).	This ISG was prepared in accordance with regulations that implement the Section 106 process found at 36 CFR Part 800. The ISG explicitly follows the four steps described in in these regulations.