



Alaska Hydro Projects: FERC & Section 106 Compliance

Pelican Hydroelectric Plant Water Conveyance Flume, 1938 (NLUR Photograph 2009)



National Historic Preservation Act (NHPA 1966: 16 USC 470)

Section 106, a single paragraph says it all:

The head of *any Federal agency* having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency *having authority to license* any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, *take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register*. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.



Players

- **State Historic Preservation Officer/DNR Office of History and Archaeology**
- **Land Owners (Fed/Forest Service, State/DNR, Native Villages/Corps, Private)**
- **Funding Agencies (AEA)**
- **Municipal Officials**



Process

- **Memorandum of Agreement (MOA) or Programmatic Agreement (PA)**
- **Historic Properties Management Plans (HPMP)**
 - 2002 Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects.
 - FERC typically requires licensees to develop HPMPs
 - Considering and managing effects on historic properties of activities associated with constructing operating, and maintaining hydropower projects.

Know your MOA/PA and HPMP Stipulations:

➤ Who's Responsible?

Licensee

➤ What Needs to get done?

Survey? HABS/HAER? Other?

➤ Who can do it?

Qualified Individual? Other?

➤ When does it need to get done?

Schedules & Timing



Timing is Everything!

- Draft MOA/PA or HPMP submitted when license application filed
 - Enable stakeholder involvement early in process (FERC, Forest Service, SHPO, Native groups, municipalities)
 - **30 day review periods by agencies** (State Historic Preservation Officer, F.S.)
 - Seasonality of historic documentation and or archaeological work
 - Obtaining signatures

Process In Action

The Pelican Case Study



Separate and Identifiable Consultation

- **Section 106 requires separate consultation from NEPA, FERC Permit**
 - Can be completed at same time, but needs to be separated and identified
- **Prefiling consultation** involving the licensee and the various stakeholders and Indian tribes is already required through the FERC, and provides a good opportunity for completing a draft HPMP at this time and initiating Section 106.
- The revised implementing regulations for Section 106 allow FERC to ***authorize the licensee*** to initiate Section 106 consultation on its behalf
 - This means that the licensee can begin early formal Section 106 consultation with the SHPO/THPO, Indian tribes, and other stakeholders at the time it files notice of intent to file a license application with the Commission

