

ANTHC'S NHPA COMPLIANCE PROCESS

March, 2020

ANTIQUITIES ACT OF 1906

Summary

The Antiquities Act of 1906 (54 U.S.C. §§320301-320303) authorizes the President to proclaim national monuments on federal lands that contain historic landmarks, historic and prehistoric structures, or other objects of historic or scientific interest. The President is to reserve "the smallest area compatible with the proper care and management of the objects to be protected." The act was designed to protect federal lands and resources quickly. Presidents have proclaimed a total of 158 monuments, and also have enlarged, diminished, and changed the terms of monuments previously proclaimed by Presidents. Congress has modified many of these proclamations and has abolished some monuments. Congress also has created monuments under its own authority.

SECTION 306108 OF THE NHPA (54 CFR 300100)

- Congress enacted the National Historic Preservation Act in 1966, mandating that Federal Agency decision makers consider historic properties during project planning (PL 89-665, PL 96-515). This was a response to damage and loss of historic buildings, cemeteries and other properties due to Federal projects in the 1950's-early 1960's.
- The 1966 Act established a national historic preservation program that included federally funded State Historic Preservation Offices and Officers in each state. The Act was renamed 54 USC 300100 *et seq* in 2014.
- Section 306108 requires Federal agencies to take into account the effects of their undertakings including those they assist, fund, or permit, as well as those they carry out on historic properties. **The law requires that evaluations and SHPO consultations to be completed before construction begins.**

ANTHC'S TITLE V RESOLUTION (REF PL 93-638)

ANTHC Resolution 19-05, certified October 2, 2019, states that when the ANTHC enters into a TVCPA, the ANTHC assumes all Federal responsibilities under the National Environmental Policy Act (NEPA), the **National Historic Preservation Act (NHPA)**, and related provisions of law that would apply if the Secretary of the Department of Health and Human Services were to undertake the construction project (e.g., 25 USC 458aaa-8; 42 C.F.R. §137.285). The Resolution further states that ANTHC has adopted the IHS environmental review procedures; this includes the NHPA compliance process.....

SECTION 306108 CHECKLIST

Initial Review

Review Project Scope , Nos 17a, b in the matrix.

Exempt Activities, i.e., Purchases, Planning, Require No Further Evaluation

Action, if needed (1. Field survey/ testing) is identified in ER or during the internal review. If NOT then a Section 106 review is done.

Survey or mitigation is completed.

Survey or mitigation report is received by ANTHC.

Survey or mitigation report is submitted to SHPO.

SHPO Consultation, 'No Historic Properties Affected' Finding

PM: Provide CRM with 65% scope and site plan.

CRM: Carries out internal review.

CRM: Provides PM with an unsigned copy of the Tribal Consultation form.

PM: Provides CRM with a Tribal Consultation form signed by the Tribal Representative.

CRM: Prepares concurrence request for SHPO; after internal review of the request, Authorized Agency Official (Title V or Funding Agency) signs the request and it is submitted to SHPO.

SHPO contacts CRM requesting additional information or states disagreement with Agency Finding, or SHPO sends concurrence notice to CRM.

CRM: Notifies PM of SHPO concurrence, or continues consultation with SHPO with funding agency.

CRM: Enters final result of the review into Cognito.

NHPA CONCERNS AT THE INITIAL REVIEW STAGE

Chitina, ca. 1920



17. Historic Preservation:

- a. Does the proposed action involve the purchase, construction, alteration, renovation, or lease of a building or portion of a building that is more than 50 years old?

- b. Will the proposed action adversely affect properties listed, or eligible for listing, on the National Register of Historic Places?

Chitina, historic building, 2010



AHRS SITES, KOTZEBUE



COMPLETION OF THE REVIEW

The Section 306108 evaluation results in one of the following findings or measures:

- “No historic properties affected”
- “No adverse effect” to historic properties
- “Adverse effect” to historic properties that requires an MOA or PA to be in place prior to beginning construction.
- Mitigative measures such as monitoring are stipulations of MOAs

TRIBAL CONSULTATION FORM

Consultation with the local tribe concerning possible effects of a project on cultural resources is a requirement under 36 CFR 800.2(c)(1)(ii)(B-C).

**SECTION 306108 REVIEW WITH TRIBE AND
ALASKA NATIVE TRIBAL HEALTH CONSORTIUM (ANTHC)**

The ANTHC is proposing the following project in _____, Alaska under Project No. AN 15-_____.

SCOPE OF UNDERTAKING: The proposed scope of work is as follows:

AREA OF POTENTIAL EFFECT (APE): The Preliminary APE, as created through tribal cooperation, is detailed below. A Preliminary APE map is attached for review.

APE SITE REVIEW: The following sites have been identified in the Preliminary APE.
[= Check if additional sites are listed on an attached sheet.]

Site No.	AHS ID	Site Name	Age	Description
1				
2				
3				

PRELIMINARY FINDING:

In compliance with Section 306108 of the National Historic Preservation Act (54 USC 206108) and 36CFR800, the ANTHC has initiated a historical property review for this project. The effect on cultural, spiritual, and historical properties as anticipated by the ANTHC representative and the tribe is outlined above. The ANTHC is documenting the above finding as preliminary consultation with the tribe. These findings apply only to the project as defined under the Scope of Undertaking, and any changes to the project will require further Section 306108 Review in accordance with 36 CFR 800.4. The Cooperative Project Agreement between the ANTHC and the tribe will include discovery programs, where all observation will cease in the immediate area of the finds pending further recommendations from the Environmental Coordinator in consultation with the Alaska SHPO and the Tribe.

ANTHC Project Manager: _____ Tribal Representative: _____
 Name: _____ Name: _____
 Title: _____ Title: _____
 Date: _____ Date: _____

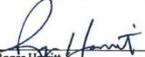
DISCOVERY LANGUAGE IS ALWAYS INCLUDED IN SHPO CONCURRENCES (“NO HISTORIC PROPERTIES AFFECTED”)

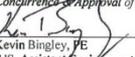
Evaluation

Proposed isolation valve vault 'B' and the proposed alignment of the gravity flush pipe from the water treatment plant to its connection to the outfall location are both located outside of the XTI-00003 site polygon. Proposed isolation valve vaults 'A' and 'C' and the proposed outfall piping from Vault 'C' are located in different, developed portions of the XTI-00003 site polygon that include existing buildings and roadways. The Vault 'A' location is adjacent to Bay drive on the southeastern side of an existing house. The Vault 'C' location is located north of the Second Avenue-D Street intersection on the north side of an unnamed roadway, adjacent to an existing building. The Vault 'C' outfall piping alignment begins at the vault and follows an unnamed, existing roadway to the active beach on the east side of Akhiok Bay, then westward to the point it connects to the main outfall piping alignment. Based on the developed nature of the locations for the project components, there is little potential for the project to impact documented cultural resources in the vicinity of XTI-00003. The ROC chapel (XTI-00021) is located more than 170m east-northeast of the nearest project component, Vault 'C'.

AGENCY FINDINGS: No Historic Properties Affected. This finding is based on the evaluation presented above.

In compliance with Section 306108 of the National Historic Preservation Act (54 USC 306108) of 1966 and 2014 and 36CFR800, the ANTHC, under authority of P.L. 86-121, has completed a Historical Property review for this undertaking. The finding is pending until concurrence and approval from the Indian Health Service. The finding applies only to the undertaking as defined under this notification and any changes to the undertaking will require further Section 306108 Review in accordance with 36CFR800.4. SHPO has 30 days after receipt of this letter to complete a review and provide comments. If no comments are received, then the ANTHC will assume concurrence and proceed with project planning and implementation without further SHPO consultation. The cooperative agreement between the ANTHC and the village will include discovery language, where all construction activities will cease in the immediate area of the finds pending further recommendations from the ANTHC in consultation with the IHS, Alaska SHPO, and the Tribe.


Roger Hamitt
ANTHC, Cultural Resources Manager
2/10/2017 Date

Concurrence & Approval of Finding:

Kevin Bingley, PE
IHS, Assistant Environmental Engineer Program Chief
2/10/17 Date

SHPO Concurrence:

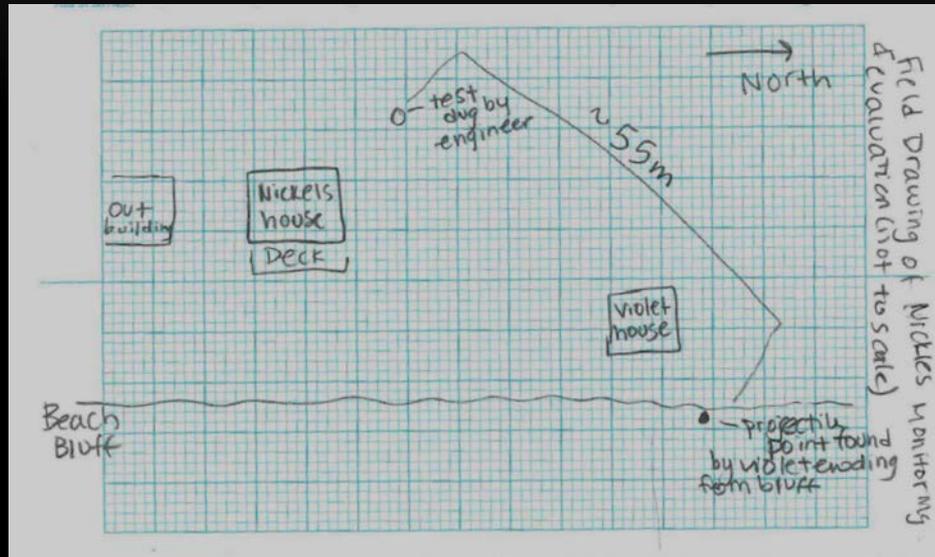
MBS	No Historic Properties Affected
	Alaska State Historic Preservation Officer
Date:	2-22-17
File No.:	3551A IHS 2017-00139
	Please review: 36 CFR 800.13 / A.S. 41.35.07(d)

“...The cooperative agreement between the ANTHC and the village will include discovery language, where all construction activities will cease in the immediate area of the finds pending further recommendations from the ANTHC in consultation with the IHS, Alaska SHPO, and the Tribe.”

KIVALINA, CAKR NHL, 2019 MONITORING



C. FEHRMAN, IHS LEAD PROJECTS vs ANTHC TITLE V PROJECTS



False Pass Testing and Monitoring 2019

SCATTERED SITES PROGRAMMATIC AGREEMENT

- An agreement among SHPO, the Advisory Council for Historic Preservation and ANTHC was established in 2012, and will expire in 2022.
- The agreement replaces individual SHPO concurrence requests for each of the Scattered Sites locations; instead files are reviewed internally and an annual report is submitted to SHPO and the Advisory Council.
- The agreement reduces the amount of time for compliance from approximately 32 days for a concurrence request to normally 1 hour for an internal review.



Fort St. Michael Building, ca. 1925

REVIEW REQUIREMENTS

- Standard Scattered Sites home owner application files, containing the owners name, and deed or mortgage contract.
- Location of the property. Street addresses or GPS coordinates are preferred. Legal descriptions can be used but add time to the review.
- Reviews must be completed before any ground disturbing work is done, including geotesting or clearing brush.

ARCHAEOLOGY AND ENVIRONMENTAL FORM (A&E, SCATTERED SITES)

Archeology and Environmental Information

Dear Homeowner:

Federal funding that you are requesting in order to provide water and sewer service to your home requires an Environmental Review with regards to the National Environmental Policy Act, the Endangered Species Act, the Clean Water Act, and other Federal and State concerns. Our organization must follow these requirements. The ANTHC /DEHE is committed to protecting your land and culture.

- The State Historic and Preservation Office requires photographs of your home. Make sure you include them in your application.

Please answer the following questions:

1. Do you know of any plant or animal species on your property that is on the endangered or threatened species list? _____
2. Is your home or any building on your property, over 50 years old? _____
3. Do you know if any human burial sites have been discovered on or near your property? _____
4. Has there ever been artifacts of cultural significance discovered on or near your property? _____
5. Have bones or skeletal remains of extinct animals been found on or near your property? _____
6. Does your property contain any lakes, streams, rivers, ponds, or springs? _____
7. Is your home in a flood plain zone? _____

Homeowner's Name, Printed: _____

Homeowner's Name, Signed: _____

Today's Date: _____

This form replaces the Tribal Consultation Form used for standard projects. The same regulation applies, even though it is only for the property owner. The filled out and signed form must be included in the application file that is reviewed under the terms of the 2012 Programmatic Agreement.

CASES REQUIRING FIELD SURVEYS

- In a small percentage of cases, reviews determine that field surveys are needed due to cultural resources that are at or near the project location.
- The Cultural Resources Manager arranges to have the survey done with one of the term Cultural Resources service providers, and coordinates with the Project Manager to complete the work before construction is started.
- Properties that are BIA restricted land require ARPA permits for surveys to be conducted. The Cultural Resources Manager obtains these.
- The Project Manager advises the home owner that a Surveyor will be visiting to survey their property and will also want to discuss cultural resources with them (consult).
- Survey reports, if they are negative, are submitted with annual report.

NONCOMPLIANCE (FORECLOSURES)

Noncompliant projects (violations of the NHPA) have occurred too often for both standard SHPO consultations and Scattered Sites.

Causes

- Assignments and reassignments of projects among PMs. PM understanding of compliance requirements is lost in the transfers.
- Changes in project scopes are made without new reviews being done.
 - Reviews and concurrences are based on specific project scopes.
 - Changes, if substantial, may be outside of the concurrence.
 - Last minute changes in project plans are made without considering effects to SHPO concurrences may result in foreclosures.

ANTHC'S CULTURAL RESOURCES MANAGER

Duties include:

- Represents ANTHC in coordinating consultations with SHPO, Advisory Council for Historic Preservation, Bureau of Indian Affairs and U.S. National Park Service and other state and federal agencies.
- Prepares MOA's and PA's with SHPO and federal agencies; oversees responsibilities in meeting the terms and conditions of agreements.
- Determines needs for surveys and mitigative measures for projects.
- Prepares scopes for field surveys and monitoring contracts and serve as project officer for contracted services.
- Prepares SHPO concurrence requests and carries out Scattered Sites Programmatic Agreement reviews.
- Addresses National Historic Preservation Act components of the Environmental Reviews and Environmental Assessments

SP #