

EXHIBIT 2-M.7

Section 106 Tribal Consultation: Step-by-Step Processⁱ

STEP 1: INITIATE CONSULTATION

- Using information from **TDAT—Tribal Directory Assessment Tool**, write a letter to the tribe(s) and invite them to consult
 - **Exhibit 2-M.6: Sample Tribal Consultation Letter**
 - Inquire about historic properties
 - Include project description and insert a map of the project area
 - Letters to tribal leaders and Tribal Historic Preservation Officer (THPO) identified using TDAT
 - Letter must be on **Responsible Entity's** letterhead and signed the RE's official
 - **Cannot be delegated** down to a consultant (per HUD guidance in webinar on 6/21/2012)
 - Letter may be transmitted by email
 - Response requested within 30 days of receipt
 - Tribe requested to accept or decline **consultation** within 30 days, NOT to provide information within 30 days
 - If tribe responds with no interest, or there is no response, tribal consultation is complete
 - Responsible Entity may invite non-federally recognized tribes to be consulting parties; or they may also participate as members of the public

STEP 2: IDENTIFY AND EVALUATE HISTORIC PROPERTIES

- Gather and share information about known and potential historic properties
 - Evaluate properties on the National Register of Historic Places
 - Tribes possess special expertise in evaluation of historic properties of religious and cultural significance to them
 - If parties disagree, can invite the Advisory Council on Historic Preservation (ACHP) to consult
 - Tribe can ask ACHP to request that the Responsible Entity obtain a formal Determination of Eligibility
- Consultation meetings with tribes
 - Face-to-face, web, phone
 - Joint consultation with other tribes and consulting parties
 - No fees paid to consulting parties, but travel expenses or consultant costs are allowable
- Confidentiality
 - Be aware it may be culturally inappropriate to share some information
 - Protect sensitive information by all practical means and in accordance with state and federal laws
- If an archeological survey is requested/needed, use HP Fact Sheet #6—**Guidance on Archeological Investigations in HUD Projects**

- Fact Sheet #6—Factors to consider
 - Information received from SHPO, THPO, tribes
 - Likely impact of the project on potential properties
 - Previous ground disturbance
 - Likely significance of potential properties
 - Magnitude of the project and degree of HUD involvement
 - Public interest
 - Presence of human remains
 - ACHP Policy Statement on Affordable Housing and Historic Preservation: “Archeological investigation should be avoided for affordable housing projects limited to rehabilitation and requiring minimal ground disturbance”
 - Statement does NOT apply to new construction

STEP 3: ASSESS EFFECTS

- Criteria of Adverse Effect:
 - Physical destruction or damage of historic properties
 - Alteration of building or setting or use that does not meet Secretary of the Interior’s standards
 - Removal of property from historic setting
 - Introduction of incongruent visual, audible, or atmospheric changes
 - Transfer, lease, or sale of historic properties
- Make a Finding
 - No Historic Properties Affected
 - No Adverse Effect
 - Adverse Effect
- Notify all consulting parties of the Finding
 - Parties have 30 days to object
 - Tribe or RE may ask ACHP to review

STEP 4: RESOLVE ADVERSE EFFECTS

- If Adverse Effect, notify ACHP and invite their participation in consultation
 - ACHP will respond within 15 days
 - Criteria for ACHP participation
 - “Presents issues of concern to Indian tribes and Native Hawaiian organizations”
 - Consult to avoid, minimize, or mitigate Adverse Effects
 - Consider alternatives
 - Consider mitigation measures
 - Memorandum of Agreement (MOA)
 - Required signatories—RE, SHPO/THPO, ACHP
 - Invited signatories—THPO, tribe, other consulting parties
 - Must be executed PRIOR TO decision point for project
 - Mitigation Measures
 - Data recovery through excavation
 - Signage or plaques on site
 - Oral history
 - Interpretive exhibits with artifacts

- Web archive or exhibit
- Educational programs
- Deed restrictions for property disposals
- RE must inform tribe and others when stipulations and mitigation measures have been carried out
- Termination of consultation may be requested by
 - THPO on tribal lands, RE, SHPO, ACHP (if participating)
 - Tribe that is consulting about properties off tribal lands may decline to sign MOA, but cannot terminate consultation
- Discoveries During Construction
 - If historic properties are discovered during construction, stop construction and notify tribes, THPO, and SHPO within 48 hours, and re-enter consultation
 - If discovery includes human remains, respectfully cover over and secure the remains, and notify same officials plus local law enforcement officials
 - ACHP “Policy Statement Regarding Treatment of Burial Sites, Human Remains, and Funerary Objects”

ⁱ Excerpted from: *Consulting with Indian Tribes About Historic Properties in Environmental Review-Guidance for Responsible Entities*, June 21, 2012; U.S. Department of Housing and Urban Development, Community Planning and Development