

Milford Wayne Donaldson, FAIA  
Chairman

Teresa Leger de Fernandez  
Vice Chairman

John M. Fowler  
Executive Director



*Preserving America's Heritage*

September 21, 2015

The Honorable Thomas James Vilsack  
Secretary  
U. S. Department of Agriculture  
1400 Independence Avenue, SW  
Room 200-A  
Washington, DC 20250

Dear Mr. Secretary:

In accordance with Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) and its implementing regulations, "Protection of Historic Properties," (36 C.F.R. Part 800), I am providing to you the final comments of the Advisory Council on Historic Preservation (ACHP) on the proposed release from suspension of the Permit to Drill by Solenex LLC in the Lewis and Clark National Forest.

These comments are provided to you so that you may take them into account in developing your recommendation to the Secretary of Interior regarding whether or under what conditions the Bureau of Land Management (BLM) may release the Permit to Drill from suspension.

These comments are also being provided to Secretary of the Interior Sally Jewell. In accordance with Section 110(l) of the Act (54 U.S.C. § 306114) and 36 C.F.R. § 800.7(c)(4), she must take into account the ACHP's comments and respond to them prior to making a final decision on the permit.

In addition to our comments specific to this permit, our comments include recommendations for program improvements in the consideration of effects to historic properties in federal minerals leasing and in the coordination and transparency of federal roles in Section 106 review regarding such undertakings. The ACHP welcomes the opportunity to work with Forest Service and BLM to implement these recommendations.

We would appreciate a copy of your recommendation to the Secretary of Interior regarding this matter when it is available.

Sincerely,

Milford Wayne Donaldson FAIA  
Chairman

Enclosures

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*Preserving America's Heritage*

September 21, 2015

The Honorable Sarah "Sally" Jewell  
Secretary  
U. S. Department of Interior  
1849 C Street, NW, Room 6156  
Washington, DC 20240

Dear Madam Secretary:

In accordance with Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108) and its implementing regulations, "Protection of Historic Properties," (36 C.F.R. Part 800), I am providing to you the final comments of the Advisory Council on Historic Preservation (ACHP) on the proposed release from suspension of the Permit to Drill by Solenex LLC in the Lewis and Clark National Forest.

You must take these comments into account, and respond to them, prior to making your final decision on the permit. As required by Section 110(l) of the Act (54 U.S.C. § 306114), you may not delegate these responsibilities. The regulations at 36 C.F.R. § 800.7(c)(4) delineate the requirements of the response.

These comments are also being provided to Secretary of Agriculture Tom Vilsack so that he may take them into account in developing his recommendation to you regarding whether or under what conditions the Bureau of Land Management (BLM) may release the APD from suspension.

In addition to our comments specific to this permit, our comments include recommendations for program improvements in the consideration of effects to historic properties in federal minerals leasing and in the coordination and transparency of federal roles in Section 106 review regarding such undertakings. The ACHP welcomes the opportunity to work with the Forest Service and BLM to implement these recommendations.

We look forward to your response.

Sincerely,

Milford Wayne Donaldson FAIA  
Chairman

Enclosures

ADVISORY COUNCIL ON HISTORIC PRESERVATION

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*Preserving America's Heritage*

**Comments of the Advisory Council on Historic Preservation  
Regarding the Release from Suspension of the Permit to Drill by Solenex LLC  
In Lewis and Clark National Forest, Montana  
September 21, 2015**

The Advisory Council on Historic Preservation (ACHP) provides the following comments regarding the currently suspended Solenex LLC Permit to Drill for a single exploratory oil and gas well in the Lewis and Clark National Forest, pursuant to Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations at 36 C.F.R. Part 800 (Section 106). The United States Forest Service (FS) has been conducting a Section 106 review regarding the proposed undertaking. On July 7, 2015, the Blackfeet Tribal Historic Preservation Officer, a required signatory to any Section 106 agreement, terminated the Section 106 consultation, having determined that further consultation to reach such an agreement was unlikely to be productive. The termination triggered the need for these comments in accordance with 36 C.F.R. § 800.7.

The ACHP chairman appointed a panel of five ACHP members to develop these comments on behalf of the ACHP. In preparing these comments, the panel received documentation compiled by the FS in the Section 106 review. On September 2, 2015, the panel conducted a public meeting in Choteau, Montana, and received oral testimony from public officials, organizations, and individuals, including the FS, the Bureau of Land Management (BLM), the Montana State Historic Preservation Office (SHPO), the Blackfeet Tribe of the Blackfeet Reservation of Montana, Solenex LLC, the Glacier County Commission, and the Glacier-Two Medicine Alliance. The panel also conducted government-to-government consultation with the Blackfeet Tribe at their headquarters in Browning, Montana. Finally, the ACHP received written comments from 104 public officials, organizations, and individuals regarding the proposed undertaking and its adverse effects to the Badger-Two Medicine Traditional Cultural District (TCD), a historic property determined eligible for the National Register of Historic Places (NRHP) and of religious and cultural significance to the Blackfeet Tribe. The TCD encompasses lands in the Lewis and Clark National Forest and the Blackfeet Reservation and is adjacent to the Scapegoat and Bob Marshall Wilderness Areas and Glacier National Park.

In recognition of the important role both the FS and BLM play in managing these lands and the resources beneath them, the ACHP is providing these comments to Secretary of Agriculture Tom Vilsack, who oversees the FS, and Secretary of the Interior Sally Jewell, who oversees the BLM. The well would be placed on FS lands. The FS has management responsibilities for above surface activities on its lands. The subsurface mineral rights at issue are held and managed by the BLM. In accordance with the Mineral Leasing Act, 30 U.S.C. § 181 et seq., and Onshore Oil and Gas Order No. 1, the FS has the lead responsibility for the environmental review of the permit for this action. However, the final decision on the permit rests with the BLM. The FS will provide its recommendation on the permit to the BLM, and then the BLM will make a final decision on the permit.

Because the Section 106 consultation process has been terminated, the Secretary of Agriculture must take into account the ACHP's comments in making a final decision on the FS recommendation to the BLM.

Thereafter, since the final decision on the permit rests with the BLM, the Secretary of the Interior is also required to take into account these ACHP comments, and respond to them, prior to making her final decision on the permit. She must provide to the ACHP a summary of the decision that contains the rationale for the decision and evidence of consideration of the ACHP's comments. She must also provide this to all of the Section 106 consulting parties and notify the public of its availability. Once this is completed, the Section 106 process for this undertaking will have concluded.

## **Background**

### ***Federal Consideration of the Project***

Solenex proposes a single exploratory oil and gas well including 5.7 miles of new road construction, 0.3 miles of road re-construction, a temporary bridge across the Two Medicine River, and a 4-acre drill pad. Combined, 14.18 to 22.91 acres would be disturbed by the road and drill pad. Once constructed, the well would require periodic access and maintenance. Should the well prove productive, it is reasonably foreseeable that the applicant/ leaseholder, Solenex LLC, may apply for a permit to extend its drilling and extraction within its 3,247-acre leasehold, a scenario known as full field development.

This project has a lengthy and complicated history. As part of its early 1980s initiative to develop mineral rights on undeveloped federal lands, the BLM leased the oil and gas development rights to Fina, the antecedent of Solenex, in 1982. This was one of 51 leases in the area issued at that time. The Application for Permit to Drill (APD) was initially approved by the BLM and FS in January 1985, but was suspended in October 1985 pending further environmental review and analysis under the National Environmental Policy Act (NEPA). One issue raised at that time was the Blackfeet Tribe's objections to the project because of the effects to a property of religious and cultural significance to the tribe, now identified and determined eligible for the NRHP as the Badger-Two Medicine TCD. The FS and BLM issued a Draft Environmental Impact Statement in October 1989 and a Final Environmental Impact Statement in October 1990. In February 1991, the FS and BLM issued a joint Record of Decision (ROD) concluding the NEPA review and approving the Permit to Drill subject to certain environmental conditions. In January 1993, the BLM re-issued its ROD approving the Permit to Drill subject to the same environmental conditions. The 1991 and 1993 RODs considered the effects of the undertaking on archaeological sites. The 1993 ROD stated that "no traditional cultural properties were found in the project area," but the Montana SHPO did not concur with such a finding. The following mitigation measures set out in the 1991 and 1993 RODs addressed the potential for effects to archaeological properties:

### **Cultural Resources**

- *Prior to any construction activity, Fina [now, Solenex] shall provide the Blackfeet Tribal Business Council and the Forest Service with a schedule of when work is to be performed. Fina [now, Solenex] shall provide this schedule to the Glacier Report and Great Fall Tribune in order to inform local individuals of proposed activities that may affect their legal, cultural, or religious interests.*

### **Archaeological Resources**

- *Effects to NRHP [National Register of Historic Places] eligible or listed cultural resources shall be mitigated according to the regulations outlined in Section 106 of the National Historic Preservation Act and 36 C.F.R. [Part] 800.*
- *If an archaeological site is located during construction activities, work shall immediately stop and the Lewis and Clark National Forest Supervisor's Office be notified. The Forest*

*Archaeologist will examine the site and determine what course of action is necessary. Actions could include the following: 1) data recovery, 2) avoidance of the sites and/or project relocation, 3) protection on intact materials, such as with a gravel pad.*

(1993 ROD, p. 28)

Beginning in June 1993, the APD was suspended to consider legislation introduced to conserve and protect the Badger-Two Medicine area. In June 1996, the FS began a review of historic property eligibility and recommenced Section 106 consultation regarding the eligibility of historic properties and potential effects to them. This suspension continues in place.

In 1997, the FS and BLM decided not to authorize new lands for oil and gas leasing on the Lewis and Clark National Forest in the Rocky Mountain Division of the BLM, an area of 356,000 acres, including what would later come to be identified by the FS as the Badger-Two Medicine Traditional Cultural District, discussed in detail below. This decision did not affect the original 51 leases in the area granted in 1981-1982, including the Solenex lease. In the Tax Relief and Health Care Act of 2006, Congress withdrew lands from oil and gas leasing on the Rocky Mountain Division of the BLM, making the FS and BLM decision law. This law also provided tax incentives for leaseholders to transfer their oil and gas leases in the withdrawal area to the federal government or qualifying non-profit conservation organizations. As a result of these actions, the leaseholders of 33 of the leases transferred their leases to take advantage of the tax incentives. Only 18 of the original leases, including that of Solenex, remain in place and suspended currently.

As part of its effort to better evaluate the potential effects of the undertaking on the TCD, the FS, in consultation with the Blackfeet Tribe, undertook extensive ethnographic studies of the area to better define the nature of the TCD and its significance to the Blackfeet Tribe. The findings from these investigations resulted in the TCD being determined eligible for the NRHP by the FS and the Keeper of the NRHP (Keeper) in 2002 and the subsequent FS and Keeper decision to expand the boundary of the TCD. On December 4, 2014, the FS sent a letter to the ACHP, notifying it of the finding of adverse effect, requesting the ACHP's review of that disputed finding, and inviting ACHP participation in the Section 106 review.

### ***Federal Policy Developments***

Since 1993, when the FS and tribal representatives began working together to fully identify and evaluate the Badger-Two Medicine TCD, there have been many policy developments not only with regard to historic properties of traditional religious and cultural significance to Indian tribes but also in federal-tribal relations. These developments have required the FS to assess the impact of the proposed undertaking in accordance with evolving and strengthening requirements for consulting with and considering the views of Indian tribes on this and other matters at each point where such reassessment was necessary.

In 1988, the NRHP published an important guide for evaluating properties such as the TCD, Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties. In 1992, the NHPA was amended to acknowledge formally that properties of religious and cultural significance to Indian tribes may be eligible for the NRHP and to better define the role of Indian tribes in the identification and evaluation of such properties. In response to the NHPA amendments, the ACHP promulgated revised Section 106 implementing regulations in 1999 that formalized the role of Indian tribes in the Section 106 process and recognized their special expertise in identifying and evaluating historic properties of religious and cultural significance to them. Executive Order (E.O.) 13007: Indian Sacred Sites was issued in 1996, requiring federal land managers to avoid adversely impacting the physical integrity of Indian sacred sites

“to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions.” There have also been interagency initiatives such as the 2012 Memorandum of Understanding among the Departments of Defense, Interior, Agriculture, Energy, and the ACHP regarding Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites. Agency-specific initiatives include the Department of Agriculture Sacred Sites Final Report.

The government-to-government relationship between Indian tribes and the federal government has also been strengthened over time by executive orders such as E.O. 13175: Consultation and Coordination with Indian Tribal Governments (2000) and E.O. 13647: Establishing the White House Council on Native American Affairs (2013). E.O. 13647 charges the heads of 30 federal departments, including Interior and Agriculture, with protecting tribal lands, environments, and natural resources, and promoting respect for tribal cultures, among other responsibilities. In addition, most federal agencies have adopted or strengthened existing tribal policies. Since 2009, the White House has convened an annual Tribal Nations Conference inviting every tribal leader to meet with the President and Cabinet secretaries to discuss key issues facing Indian tribes.

Another significant demonstration of the commitment of the federal government to improving relationships with Indian tribes and working to protect their cultural heritage was President Obama’s decision in 2010 to support the United Nations Declaration on the Rights of Indigenous Peoples. The Declaration includes numerous provisions calling for the protection of indigenous cultures, languages, traditional practices, and cultural sites.

## **Findings**

**The Badger-Two Medicine TCD is of premier importance to the Blackfeet Tribe in sustaining its religious and cultural traditions.**

The proposed undertaking and the entire Solenex leasehold is located within the Badger-Two Medicine TCD, a historic property of religious and cultural significance to the Blackfeet Tribe. The TCD was determined eligible for the NRHP by the Keeper of the NRHP in 2002. In 2014, the Keeper considered additional documentation provided by the FS and expanded the boundary of the TCD, such that it included all of the Solenex leasehold and also included tribal lands outside of the National Forest. The TCD is eligible under Criterion A for its association with Blackfeet traditional religious and cultural practices. The TCD is eligible under Criterion B for its association with “culturally important spirits, heroes, and historic figures central to Blackfoot religion, traditional lifeways, and practices” (Determination of Eligibility 2002). The TCD is also eligible under Criterion D because the area includes significant archaeological features supporting both the time depth of the traditional use of the area and important information regarding tribal use and adaptation within the mountainous area. The Keeper summarized the significance of the TCD in stating that it “represents a unique forest-prairie adaptation that embodies Blackfeet tradition and identity, past and present.” According to the TCD documentation with which the Keeper concurred, key contributing characteristics include power, knowledge, holy area, plant/mineral/animal resources, and hunting.

The Blackfeet Tribal Business Council described the TCD in Resolution No. 260-2014 (2014) as “one of the most cultural and religiously significant areas to the Blackfeet People since time immemorial.” The tribal representatives communicated to the ACHP in the government-to-government meeting on September 2, 2015, and at the public meeting that in the tribal world view, there is no distinction between the natural and cultural values of the TCD. To them, biota health and water purity are synonymous with the well-being of the Blackfeet Tribe and Blackfeet individuals. At the public meeting, the ACHP heard directly from the current Blackfeet Tribal Business Council and from tribal members of their personal cultural and spiritual experiences in, and the healing power of, the TCD. The leadership of the tribe has

consistently raised concerns regarding the exceptional importance of this area since the first joint FS and BLM approval of the APD in 1985. The current Blackfeet Tribal Business Council reaffirmed the significance of the TCD at the public meeting on September 2, 2015, in Choteau, Montana.

The ACHP also heard directly from members of the public of their support of the Blackfeet statement of significance of the TCD. Some stated that they had also experienced the healing power of the TCD, and Blackfeet members acknowledged that the power of the place was not exclusive to Blackfeet people.

**The TCD retains integrity and is a landscape virtually unmarred by modern development and intrusions.**

Solenex has argued that its leasehold is in a “disturbed area” and provided images showing a roadway, railroad, and utility lines on the boundary of the TCD. Documentation of the FS and the Keeper’s determinations of eligibility and additional aerial and ground-level images provided by the FS clearly demonstrate that the drill site and access area as well as the overall TCD are not “disturbed.” The nearly 259 square mile area included in the TCD is generally unspoiled by modern development and intrusions, and retains integrity as a historic property. In its 2014 documentation of the finding of adverse effect, the FS acknowledges that there are:

*Two electronic communication sites located on Mount Baldy and Half Dome Crag peaks in the eastern portion of the TCD. A Forest Service administrative site, Badger Cabin, is located roughly in the center of the TCD, and numerous Forest System trails are interspersed throughout the TCD. Various access routes were constructed within the TCD over many years, but these have been or are currently being closed and rehabilitated as a result of the 2009 Travel Management decision.*

(FS letter to ACHP, December 4, 2014, pp. 2-3)

The 2009 Badger-Two Medicine Travel Plan also prohibited the use of motorized vehicles in the TCD. In its March 2015 Forest Plan Revision *Assessment of the Helena and Lewis & Clark National Forests*, the FS describes the use of the area for “backcountry recreation that relies on traditional skills, solitude, and self reliance.” The TCD is adjacent to the Scapegoat and Bob Marshall Wilderness Areas and Glacier National Park. In the 2015 Forest Plan Revision Assessment, the FS states that these 1.5 million acres of wilderness are a critical component of the North Continental Divide Ecosystem. The current intermittent and light nature of public use in the area has ensured the preservation of sites contributing and key to defining features of the TCD.

**The proposed gas exploration and development would introduce activities and intrusions incompatible with the TCD and its unique qualities.**

The FS rigorously applied the Criteria for Adverse Effect (36 C.F.R. § 800.5(a)(1)) to the undertaking in its documentation dated December 3, 2014. This documentation was prepared taking into account Solenex’s comments and objections to a previous draft finding. The FS found that the undertaking may adversely affect the defining characteristics of the TCD by diminishing its integrity of setting, materials, feeling, and association.

The FS assessment of the adverse effects can be summarized with this statement from the finding:

*Since the Hall Creek area of the TCD is associated with Blackfeet hunting, Blackfeet stories, Blackfeet power, and Blackfeet prayers/fasting/vision questing, anything that disrupts the visual*

*natural setting, interrupts meditation, or affects the feeling of power in the area will affect the associated current traditional uses of the area by the Blackfeet. This decreased ability for the Blackfeet to use this area for traditional cultural practices would also indirectly reduce the Blackfeet's ability to identify themselves as Blackfeet. It would make the associated power of the area less suitable by decreasing its effectiveness and accessibility to traditional practitioners. Further, any negative effects to the associated power in this portion of the district would also indirectly affect the power of the entire district since it is all interconnected in the Blackfeet worldview.*

(FS, December 3, 2014, p. 5)

In its letter to the FS dated January 9, 2015, responding to the request for the ACHP's opinion regarding the finding of adverse effect that Solenex disputed, the ACHP concurred with the FS finding of adverse effect. The ACHP added that, because the undertaking is located primarily within the TCD, implementation of the undertaking may result in diminution of the TCD's integrity of setting, materials, feeling, and association, even with the mitigation measures specified in the 1991 and 1993 RODs. While the data recovery of affected archaeological sites, as stipulated in the mitigation measures of the 1991 and 1993 RODs, was not considered an adverse effect at that time, the current (2004) Section 106 regulations consider data recovery to be an adverse effect (36 C.F.R. § 800.5(2)(i)). The ACHP also noted that, in the cumulative effects of the field production scenario described in the 1993 ROD, the undertaking may lead to the construction of multiple well sites and access roads and increased traffic on those access roads. Accordingly, the scale of the cumulative adverse effects would be greater than those described by the FS in its assessment of the adverse effects of the exploration well alone.

**Since the lease was issued by the BLM, the FS was unable to consider alternatives to the undertaking that would avoid adverse effects.**

The ACHP's review of the documentation indicates that neither the BLM nor FS conducted a Section 106 review prior to the BLM 1982 lease. The 1982 lease provides Solenex with the right to develop federal oil and gas reserves within that leasehold, subject to surface access conditions. The ACHP has been advised by the BLM that the FS, in conducting its environmental review of the surface access to reach subsurface minerals, may recommend to the BLM that it not approve the APD, which could eventually result in the cancellation of the lease. The FS has indicated that, prior to the ACHP's involvement in this case, it had not received such advice from the BLM, and so the Section 106 consultation had not addressed the possibility of prohibiting gas exploration. Further, when the ACHP raised the issue of avoidance in the April 2014 consultation meeting, Solenex was opposed to such a discussion because, in their view, it was infeasible.

**Although Solenex has expressed willingness to commit to and implement mitigation measures, such measures would be wholly insufficient to resolve adverse effects to the qualifying characteristics of the TCD.**

Solenex has emphasized that the current APD is for one exploratory well, with a small footprint on the edge of a large historic property. It has rejected directional drilling and well pad relocation proposals on the basis of infeasibility. At the consultation meeting in April 2015, in which the ACHP participated, Solenex invited the parties to propose mitigation schemes for consideration. When the tribe offered to trade the Solenex leasehold for a lease of comparable value on the Blackfeet Reservation, Solenex rejected that offer. The tribe subsequently informed the ACHP that the offer is no longer on the table for discussion. The Blackfeet Tribe clearly stated that no mitigation could resolve the adverse effects to this historic property. While effects to natural environmental impacts or archaeological sites may in some

circumstances be mitigated to meet modern standards, such mitigation will not address the diminution of qualifying characteristics of the TCD. The ACHP's review of the documentation as well as consultation with stakeholders and public testimony has led to the ACHP's conclusion that no mitigation measures would achieve an acceptable balance between historic preservation concerns and the undertaking.

**Congress has shown its intent to avoid oil and gas development in the TCD, and the public at large is overwhelmingly in support of the preservation of the TCD.**

In the Tax Relief and Health Care Act of 2006, Congress withdrew lands from oil and gas leasing on the Rocky Mountain Division of the BLM, making new leases in the TCD impossible. This law also provided tax incentives for existing leaseholders to transfer their oil and gas leases in the withdrawal area to the federal government or qualifying non-profit conservation organizations. It is clear to the ACHP that Congress intended to protect the area from such future development.

In addition, in the oral and written comments of the public received by the ACHP, the vast majority of respondents voiced their strong opposition to the proposed gas exploration. Many non-tribal commenters specifically identified the religious and cultural importance of the area to the Blackfeet and the tribe's earnest interest in continuing to practice their religious and cultural traditions in the area as the basis for their opposition to the project. Two Montana State Representatives and the Glacier County Council expressed their support of the recognition and protection of this area. The ACHP was also provided with a copy of a letter dated May 14, 2015, from the Governor of Montana to the Chairman of the Blackfeet Tribe stating support for the protection of the area. This consistent and overwhelming opposition to the project provides compelling evidence that the public respects the cultural importance of this area to the tribe.

## **Recommendations**

### *Project-Specific*

**The ACHP recommends that the Departments of Agriculture and Interior revoke the suspended Permit to Drill, cancel the lease, and ensure that future mineral development does not occur.**

If implemented, the Solenex exploratory well along with the reasonably foreseeable full field development would be so damaging to the TCD that the Blackfeet Tribe's ability to practice their religious and cultural traditions in this area as a living part of their community life and development would be lost. The cumulative effects of full field development, even with the mitigation measures proposed by Solenex, would result in serious and irreparable degradation of the historic values of the TCD that sustain the tribe. If necessary, the Secretary of the Interior, in coordination with the Secretary of Agriculture, should seek authorizations from Congress to withdraw or cancel the Solenex lease.

The ACHP further recommends that the Secretary of the Interior, working with the Secretary of Agriculture, take the steps necessary to terminate the remaining leases in the TCD, in a manner consistent with addressing the Solenex lease.

### *General*

**National forests and other federal land managers should seek to replicate the collaborative effort to conduct meaningful consultation with and to identify and evaluate properties of religious and cultural significance to Indian tribes.**

It has taken much time and effort by the FS and tribal representatives to fully identify and evaluate the historic property, during which time federal recognition and protocols for documentation of this property type have evolved. In addition to informing the Section 106 review of this undertaking, the collaborative effort made by the FS and the tribe has greatly strengthened working relationships and improved opportunities for historic preservation in the Lewis and Clark National Forest and should be considered a model for national forests and other federal land managers.

**The FS and BLM should work together to identify and implement opportunities to consult with Indian tribes and other Section 106 stakeholders prior to the issuance of federal mineral leases on FS and BLM lands.**

Section 106 of the NHPA requires that an agency's consideration of the effects to historic properties occur "prior to the issuance of any license" (54 U.S.C. § 306108). The regulations further clarify that the agency "shall ensure that the Section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking" (36 C.F.R. 800.1(c)). For the Section 106 process to work effectively, the agency's consideration of a "broad range of alternatives" must include avoidance alternatives, if they exist.

For this reason, the ACHP urges agencies to develop policies and procedures that require the initiation of Section 106 consultation prior to leasing decisions. Consultation during the FS national planning efforts, which may identify zones within a specific National Forest for such leases, for instance, could help the parties to identify potential historic properties of concern that could present unreasonable challenges in the permitting process. The BLM should also consider opportunities for consultation in broad scale planning efforts to identify areas suitable for oil and gas leasing. The BLM should look for models in the consultation efforts made for the recent West-wide Energy Corridor Study and, especially, the Western Solar Plan. Starting Section 106 compliance prior to the issuance of oil and gas leases could very well avoid the delays encountered in this process.

**The FS and BLM, in coordination with the ACHP, should work together to improve inter-departmental communications and transparency in Section 106 reviews of oil and gas development undertakings.**

Even once a lease is granted and an APD is filed, the BLM should participate in Section 106 review with the FS in cases where the head of the BLM retains final decision-making authority in regard to whether or under what conditions a Permit to Drill is authorized. This arrangement would ensure that such Section 106 consultations were informed by a full understanding of the interests, authorities, and limitations of each agency as they relate to such decisions. It would also make the federal responsibilities and decision making more transparent for the Section 106 consulting parties and the public.