Federal Statutes

- National Environmental Policy Act, 1970
- National Historic Preservation Act, 1966
- Section 4(f) of the DOT Act, 1966
• Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
• Executive Order 12898 (Environmental Justice)
• Executive Order 11988 (Protection of Floodplains)
• Executive Order 11990 (Protection of Wetlands)
• Section 4(f) of USDOT Act (49 USC 303)
• Clean Air Act
• Clean Water Act
• Endangered Species Act

• Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)
• Resource Conservation and Recovery Act
• Comprehensive Environmental Response, Compensation and Liability Act
• National Historic Preservation Act
• Economic, Social and Environmental Effects of Highways and Transit
• Highway Noise (23 CFR 772)
• Public Hearing Requirements
• Americans with Disabilities Act
NEPA: The National Environmental Policy Act

Requires Federal agencies to:

- consider effects on the environment
- make information available to the public and include them in the environmental review/analysis process.
Regulations

- 40 CFR 1500 – 1508 CEQ Regulations
  - Set out the process by which Federal agencies comply with NEPA
- 23 CFR 771 – FHWA regulations
  - All environmental processes are coordinated
  - Alternatives evaluated
  - Public involvement and systematic interdisciplinary approach
  - Decisions made in the overall best public interest
NEPA Early Steps

- Planning and Environment Linkage (PEL)
  - Info from planning process carries over
- Purpose and Need
- Project Scoping
- Environmental Review Process
  - Requires early and ongoing coordination with cooperating and participating agencies including tribes
NEPA Essential Elements

- Alternatives Analysis
- Impact Analysis
- Mitigation
- Public Involvement
- Interagency coordination
- Documentation
  (EIS, EA, CE)
Stakeholders

- Public Involvement is essential aspect of the NEPA process
  - Documentation is available to the public
  - Input from stakeholders/affected communities is weighed in determining the overall best public interest
- Tribes are a significant part of the decisionmaking process—on and off tribal land
Section 106 of the National Historic Preservation Act

- Requires Federal agencies to:
  - take into account the effects of their actions on historic properties
  - afford the Advisory Council on Historic Preservation an opportunity to comment
Section 106 Participants

- Federal agencies
- Advisory Council
- Consulting parties
  - SHPO/THPO/Tribe, applicants, local government, Tribes who attach religious and cultural significance, others
- Public
106 Process
36 CFR Part 800

- Grounded in consultation among stakeholders to resolve conflicts
- Enhanced role of THPO/Tribe on tribal lands
- Recognizes unique government-to-government relationship
- Requires consultation with tribes on properties of religious and cultural significance on and off tribal lands
Indian Tribes and NHOs

- Must be consulted when they attach religious and cultural significance to affected historic properties on or off tribal lands -- Section 101(d)(6)(B)
- Agency must make good faith effort to identify tribes which may have aboriginal, ancestral, or ceded land interests
- Concurrence not required when property is located off tribal lands

36 CFR 800.2(c)(2)(ii)
Principles for Tribal Consultation

- The Section 106 regulations require consultation to:
  - Be conducted in a sensitive manner respectful of tribal sovereignty
  - Recognize government-to-government relationship between tribes and the Federal government
- Acknowledge Tribes possess special expertise in assessing eligibility of resources significant to them

800.2(c)(2)(ii)(B),(C), 800.4(c)(1)
Basic Steps in the Process

- Initiate the Process
- Identify historic properties
- Assess effects
- Resolve adverse effects
Role of Tribes in Section 106

- On Tribal Lands: Agency consults with Tribe to identify Area of Potential Effect, and
- On AND Off Tribal lands:
  - Agency gathers information from Tribes
  - Agency consults with Tribe on eligibility
  - Can request formal DOE from Keeper
  - Applying the Criteria of Effect
  - Resolving adverse effects
Resolution of Adverse Effects

- Consultation - dynamic, good faith process to seek, discuss, and consider the views of participants
- Goal is agreement on ways to avoid, minimize, or mitigate adverse effects and incorporate into MOA
- Usually completes the 106 process
Can a sacred site be eligible for the National Register?
NHPA Provisions

- Properties of religious and cultural significance to an Indian tribe may be eligible for the National Register (101(d)(6)(A))

- Federal agencies must consult with any Indian tribe that attaches religious and cultural significance to historic properties (101(d)(6)(B))
Section 4(f)

The Secretary may approve projects requiring the use of publicly owned land of a public park, recreation area, or wildlife/waterfowl refuge, or land of a historic site of national, state, or local significance only if -

1) There is no feasible and prudent alternative to such use, and the project includes all possible planning to minimize harm

OR,

2) The use is determined to be *de minimis*
Section 4(f) Essentials

- Use
  - Not all impacts equate to a use
- Feasible and prudent avoidance alternatives
- All planning to minimize harm
- De minimis
- Process and documentation requirements
Coordination: NEPA, 106, and 4(f)

- Section 106 process is essential to the NEPA and Section 4(f) processes
- “Adverse effect” does not equate to a 4(f) use
- Federal agency cannot approve NEPA document until 106 has been concluded
DOT Tribal Consultation Plan

- Foster meaningful government to government relations
- Improve existing tribal programs
- Ensure meaningful tribal input
- Ensure uniform and effective delivery of tribal programs
- Assist in implementing tribal infrastructure and developing transportation capacities
Secretary’s Livability Initiative

Tied to DOT, HUD, EPA Partnership for Sustainable Communities

- Provide more transportation choices
- Support and value existing communities
- Increase public participation and enhance coordination
- Better integrate transportation and land use planning
- Reduce emissions
Context Sensitive Solutions

Approach intended to develop a transportation facility that:

- Fits into its physical environment
- Preserves scenic, historic, aesthetic, and environmental resources
- Meets community goals or needs
- Maintains safety and mobility
- Is based on public involvement
IWGIA Tribal Coordination Principles

- Respect Tribal sovereignty
- Honor the government-to-government relationship
- Respect and honor the trust responsibility
- Respect Tribal self-determination and self-governance
- Consultation is a process
Resources

- Training
  - On line
    - www.tribalplanning.fhwa.dot.gov/training
  - NHI courses on NEPA (142005)
  - 106 in Transportation (142049)
- IECR Native Dispute Resolution Network
- STEP Program for research
For more information:

- [www.fhwa.dot.gov/environment](http://www.fhwa.dot.gov/environment)
  - Historic Preservation Program
  - 23 CFR 771 NEPA
  - 23 CFR 774 4(f)
- [www.achp.gov](http://www.achp.gov)
  - National Historic Preservation Act
  - 36 CFR Part 800 – Section 106 regs
- [www.cr.nps.gov](http://www.cr.nps.gov)
  - National Register guidance