

Amy Williams

From: Adam Lyman <a.lyman@symancompany.com>
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Our only comment here at Syman LLC is about the SHPO requirements and is as follows.

We suggest the statement in Section 4.1.2 that states: "Protect historic properties by consulting with SHPO to determine if your project has the potential to damage them." be more general. Such as "the applicant must follow the requirements to protect historic properties as required in the General Permit." Alternatively "Protect historic properties as required by state law IDAPA XXXX" (we have not been able to find historic properties in the state code). Requiring each operator to consult with the SHPO office for every site is more strict than the requirements in the CGP.

If the intent here is to follow the minimum requirements in the existing construction general permit, the CGP does not have a blanket statement that SHPO must be consulted. There are three questions before the CGP advises a consultation with the SHPO. CGP Appendix E, step 1, says to determine if the site is disturbing the subsurface to install stormwater controls. If the site is not disturbing the subsurface to install stormwater controls, then no further Historic Property screening is required. Step 2 is to determine if previous professional screenings were performed. If previous screenings were performed, then no consultation with SHPO is required. Step 3 states "you must assess whether your earth-disturbing activities related to the installation of stormwater controls will have an effect on historic properties." There is some guidance on how one would do this and it does not require a consultation with SHPO. It also appears that activities not related to stormwater controls need not be considered. It does say "If you determine based on this assessment that earth disturbances related to the installation of your stormwater controls will have no effect on historic properties, you may indicate this on your NOI, and document the basis for your determination in your SWPPP, and no further screening steps are necessary. After submitting your NOI, and during the 14-day waiting period, the SHPO, THPO, or other tribal representative may request that EPA hold up authorization based on concerns about potential adverse effects to historic properties." This is what Ashley from the City of Caldwell was trying to confirm in the Webex meeting on April 22, 2020. Currently an operator can, based on reasonable research determine there will be no effect and it is up to the SHPO office to hold the NOI if they disagree. Step 4 says that if you cannot determine there is no effect on historic properties, you must contact the SHPO office. It has minimum information that has to be submitted and says that if the SHPO office does not respond within 15 days the NOI can be filed. Step 5 is in the event the SHPO office indicates there may be something historically significant, the minimum requirements to work with SHPO and mitigate impacts.

I am going to add some information about my experience with the way it is done on most private development and construction projects and a little history of our experience with the Idaho SHPO. Based on the discussions in the meeting on April 22, 2020, it seems that the Idaho DEQ thinks that all current operators are (or are required to perform) consulting with SHPO. The Historic Properties guidance was expanded in the 2012 CGP. After it's issuance, many NOI submitters/SWPPP preparers began consulting with SHPO, however many interpreted the step 3 "Have you determined..." statements as permission to determine if the site is at risk without consultation with SHPO. My personal experience was that our company sent several letters to SHPO every week for many

years requesting their guidance. Different leadership and SHPO dealt with our requests differently. Some allowed e-mail information requests and some would only allow traditional mail submittals. Sometimes we met with SHPO and they would set a system of what they wanted to receive in a request and we would follow those un-coded guidelines, but when the leadership changed the guidelines always shifted a bit. There is no formal way to do this consultation, which is a problem for the contracting community. For several years we maintained a working relationship with the SHPO and we sent requests for information to SHPO for almost all of our projects that were not already cleared through another NEPA/NFPA related process. Requests for more information or formal historic surveys were reasonable. At all times, the SHPO insisted that they had 30 days to respond to requests. The CGP states that if the SHPO does not respond within 15 days the applicant can proceed with submitting the NOI. This caused a few conflicts with our ability to submit NOIs in a timely manor over the last 8 years and some frustration between The operators, the EPA and SHPO. About 2 years ago, the SHPO office began requesting archaeological surveys for many more sites than they had been requesting in the past. This caused a lot of problems with schedules and caused the owners of the projects to get involved and our people met with SHPO people several times to sort through these requests that we could not understand. It appears that the SHPO has records of known historic sites that they will not share with the Operators. Our experience has been that they will only share their information with professionals they decide are trusted, leaving the contractors and owners to hire their trusted experts. The level of transparency and legal basis for the requests were often vague. We met with the SHPO to get more information in person about the causes for which they were requiring archaeological studies and it appeared that they were requesting surveys for properties that had a potential historic site several miles away or a historic structure that was removed several years before the operator owned the property. In other cases the potentially historic area was something like a ditch that was created more than 50 years ago. Many parties felt it was unreasonable to hire an archaeological consultant to study an irrigation ditch or similar "feature". Complying with the requests was becoming onerous as the cost to perform these surveys was often two or three time the cost to prepare a SWPPP and NOI for the site. The time it takes to complete the survey was often about 2 months or more when considering approval of the survey through by the SHPO office. As a result, we dramatically reduced the amount of requests for information from the SHPO office by determining ourselves if the site has a potential to affect a site of historic significance (based on Step 3 in appendix E of the CGP). From these experiences, some developers will not buy property unless all of the structures are razed before the purchase. Very few NOIs submitted today are done with a consultation following a consultation with SHPO.

We understand that the historic properties requirements in the EPAs CGP Appendix E are written to conform to the National Historic Preservation Act (NHPA) [reference 2017 Construction General Permit - Fact Sheet page 94 of 98]. The CGP Fact Sheet states "Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of Federal "undertakings" on historic properties that are listed on, or eligible for listing on, the National Register of Historic Places. The term Federal "undertaking" is defined in the NHPA regulations to include a project, activity, or program under the direct or indirect jurisdiction of a Federal agency including those requiring a Federal permit, license or approval. See 36 CFR 800.16(y). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. See 36 CFR 800.16(l)." From our experience SHPO has a history of stretching the bar of sites that are or could be eligible for registry on the National Register of Historic Places. Therefore, we are uncomfortable with a general statement that all construction projects must consult with SHPO.

It appears that the application of the NHPA is not required by the IPDES program. The IPDES is a State of Idaho program and as a State program not subject to other federal permits such as NFPA. [reference House Bill 406 2014 Legislative Session 39-175A.(f)]. House bill 406 states: "That a state program must be run with a minimum of federal interference in permitting, inspection and enforcement activities and that all state permitting actions under the approved state program are to be state actions and are not subject to consultation under the endangered species act or analysis under the provisions of the national environmental policy act. There should be no conditions of approval of the state program that have the effect of undermining or circumventing these principles;". We believe that including a statement in the rules to require operators to consult with SHPO should be done with the intent of complying with state law.

Is there a state statute that requires construction projects or other earth disturbing processes to perform cultural resource surveys or consult with the SHPO? We do not know of any. If they exist, these requirements should be described in detail and not exceed the requirements in the Federal CGP. As written, the statement in 4.1.2 of the guidance document exceeds the existing requirements in the CGP.

Adam Lyman

PE, CPESC – Design Manager

| Phone: 208-287-8420 | Cell: 208-739-8320 |

| Email: a.lyman@symancompany.com |

| Website: <https://symancompany.com> |

| Address: 2101 Delta Drive, Nampa, Idaho 83687 |

