

Differences in Alaska State vs Federal Cultural Resources Regulatory Frameworks

Policy / process element	Federal framework (NHPA §106 + related)	Alaska state requirements (AS 41.35 + practice)
Legal trigger	Section 106 triggered by any “federal undertaking” that may affect historic properties, including issuance of a CWA 404 permit by the U.S. Army Corps or other federal approvals. ¹²³	Alaska Historic Preservation Act applies to disturbance of historic, prehistoric, and archaeological resources on state lands and to state-controlled actions; DOT&PF applies state cultural resource procedures to its projects as owner/manager. ⁴⁵
Lead decision-maker	Federal action agency (e.g., FHWA if funding, USACE for 404, or another federal lead) is responsible for Section 106 findings and consultation. ¹²³	Alaska DOT&PF, in coordination with the Office of History and Archaeology (OHA/SHPO), manages cultural resource compliance for state interests and must comply with AS 41.35 on state lands. ⁴⁵
Consultation parties – core	Mandatory consultation with SHPO, any Tribal Historic Preservation Officers, affected tribes, local governments, applicants, and other consulting parties. ¹²	OHA/SHPO is the state preservation authority; consultation with tribes and Alaska Native organizations is driven primarily by federal requirements when a federal undertaking exists, not by a detailed state statutory consultation framework. ⁴⁵
Tribal and ANCSA consultation	Federal agencies must identify and invite tribes and Native organizations with potential interests, including Alaska Native tribes; consultation is a continuing, government-to-government process. ¹²⁶	State statutes recognize tribal and cultural interests indirectly via OHA’s mission; DOT&PF typically participates in tribe/Native corporation engagement as part of the federal Section 106/NEPA process rather than under a separate, state mandate. ⁴⁵

Public involvement – baseline duty	Section 106 regulations require the agency to “seek and consider” public views at a level commensurate with the project and likely public interest. ¹²	No standalone, detailed public-involvement regime in AS 41.35 specific to cultural resources; public process usually occurs through state transportation/NEPA equivalents, land-use decisions, and general environmental review rather than a cultural-resource-only statute. ⁴⁵
Public involvement – timing and integration	Public involvement must occur through all Section 106 steps (initiation, identification, effects, resolution), and is commonly integrated with NEPA scoping, EA/EIS comment periods, and public meetings. ¹²	DOT&PF Environmental Procedures Manual directs integration of cultural resource issues into broader project public processes (e.g., project open houses, comment periods) rather than separate state-law cultural resource hearings. ⁴⁵
Documentation requirements	Requires defined documentation: Area of Potential Effects, identification methodologies, National Register eligibility evaluations, effect determinations, and records of consultation; adverse effects usually resolved in a Memorandum of Agreement or similar instrument. ¹²	State practice centers on survey reports, AHRS site forms, and correspondence with OHA/SHPO; documentation supports both Section 106 and compliance with AS 41.35. ⁴⁵⁷
Standard for resource significance	Focus on properties listed in, or eligible for, the National Register of Historic Places, applying federal criteria A–D. ¹²	AS 41.35 protects “historic, prehistoric, and archaeological resources” on state lands as a class; National Register eligibility is relevant for planning and Section 106, but state protection does not depend solely on NRHP status. ⁴⁵

Substantive outcome vs. procedure	Section 106 is procedural: it requires identification, assessment, and consultation. Adverse effects usually resolved in a Memorandum of Agreement or similar instrument. ¹²	AS 41.35 includes protections (e.g., requiring permits for excavation, restricting disturbance, and authorizing enforcement) on state lands; DOT&PF project design and mitigation must respect these when managing or affecting state-owned resources. ⁴⁵
Enforcement and penalties	Noncompliance is addressed through federal administrative/permit consequences and potential litigation over failure to follow Section 106 procedures. ¹²³	AS 41.35 provides enforcement tools and criminal penalties for unauthorized disturbance of cultural resources on state lands (e.g., class A misdemeanor), implemented through OHA, law enforcement, and state project conditions. ⁴⁵

Footnotes	
1	FHWA Section 106 tutorial – initiation, roles, and responsibilities. https://www.environment.fhwa.dot.gov/env_topics/section_106_tutorial/chapter4_2.aspx
2	FHWA Section 106 tutorial – public and consulting party roles. https://www.environment.fhwa.dot.gov/env_topics/section_106_tutorial/chapter2_4.aspx
3	EPA guidance on consultation for CWA Section 404 program and federal undertakings. https://www.epa.gov/cwa404g/consultation-cwa-section-404-program-requests-endangered-species-act-and-national-historic
4	Alaska DOT&PF Environmental Procedures Manual, Chapter 10 Cultural Resources. https://dot.alaska.gov/stwddes/desenviron/assets/pdf/manual/epm20/ch10.pdf
5	Alaska DOT&PF guidance and OHA/SHPO role description for cultural resources in transportation projects. https://aws.state.ak.us/OnlinePublicNotices/Notices/Attachment.aspx?id=97773

6	NPS discussion of cultural and natural resource consultation, including tribes and Native organizations. https://www.nps.gov/articles/000/cultural-and-natural-resource-consultation.htm
7	Alaska Region and state cultural resource planning/response guidance referencing documentation practices and AHRS use. https://www.fs.usda.gov/media/39162