

National Fire Plan/Community Assistance Grant – DOI Federal Environmental Compliance Guide

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The following is a simplified view of the National Fire Plan/Community Assistance grant compliance process for grants provide through the Department of the Interior agencies. This is intended to identify when certain federal laws are triggered and what may be required. This is not the complete environmental process, although the intent is to assist a potential grantee in completing the federal environmental compliance process thru design and implementation. The following will only deal with environmental compliance with federal laws.

It is strongly recommended that potential grantees discuss with the agency or agencies about the environmental compliance process with whom they will cooperate with prior to and during the development of all concept papers. In this way, projects can be designed to minimize environmental effects, thus reducing the complexity and cost of the compliance process.

Simple Guide for Completing the Federal Environmental Compliance Process

1. **(Grantee)** Grantee submits a concept paper describing their project and the effects of the actions to the environment
2. **(Fed Agency)** The concept papers are consolidated and mapped in GIS (Geographic Information System)
3. The federal agencies and the Clearinghouse Grant Selection Committee review the concept papers
 - a. One or more federal agencies provide technical review and recommendations to the Grants Clearinghouse Selection Committee on specific projects to select for funding or the federal agency selects the specific projects for funding.
 - b. Which federal laws are triggered depends on whether a federal agencies makes the decision to select grant projects or allows the Grants Clearinghouse Selection Committee to select projects for them
4. **(Fed Agency)** The grant applicants are then notified if the proposed project was selected
 - a. At this point it is not a guarantee that there is funding for the project. Funding is depended upon the amount that Congress appropriates to each Department, which is then distributed to each agency with a Department.
 - i. For the Department of the Interior agencies, the amount of funds available is undetermined until next fiscal year after the grants are selected (e.g. October 1st).
 - ii. For the Department of Agriculture, the funds used are for the current fiscal year, in that the funds were received by October 1st of the prior calendar year.
5. **(Grantee and Fed Agency)** Once the grantee has been notified about the amount of funding they will be receiving, a grantee and federal agency is then able to conduct a

formal review of the grant project area to determine if compliance is required related to ESA (Endangered Species Act) and NHPA (National Historical Preservation Act)

- a. **(Fed Agency)** This will involve the review of the concept paper and grant application.
- b. **(Grantee and Fed Agency)** If there is not enough information or appropriate maps, a representative of the funding federal agency will contact the grantee directly or through the Grants Clearinghouse Administrator (e.g. California Fire Safe Council) to obtain the needed information.
 - i. To assist in this process, if there are any past surveys in the area or if there is any completed CEQA (California Environmental Quality Act or NEPA) documents, provide them with the grant concept paper or grant application package. This can include the following documents:
 1. THP (Timber Harvest Plan) – prepared by a State certified Forester and approved by the local county planning office.
 2. CEQA documents prepared for prior projects or other projects immediately adjacent to your project. This can include Categorical Exclusions, Initial Studies, Negative Declarations, Mitigated Negative Declarations, or an Environmental Impact Report.
 3. NEPA documents; Biological Evaluations, Assessments, and/or Opinions; and Cultural Resource Reports prepared by federal agencies where they have completed, in the process of completing, or are planning projects adjacent to your proposed project.
 - a. If a federal agency is in the planning project for a fuels management project adjacent to your project, you can negotiate with the federal agency to determine if they would be willing to include your project on private lands within their NEPA analysis when they are analyzing cumulative effects.
 4. Any reports displaying results from surveys within or immediately adjacent to proposed project area will be helpful.
- c. **(Fed Agency)** If it is determined that there is a potential or actual impacts to federally listed species or cultural resources, the federal agency representative should contact and guide the grantee to determine the appropriate course of action.
 - i. The following are options that may be offered:
 1. Modify the project to where there will be no effects to federally listed species/cultural resources
 2. Modify the project to where there may be effects to federally listed species, but no adverse effects. This option will require a federal agency to consult with the regulatory agencies or use available authorities to conduct the consultation internally.

3. Not modify the project which may result in adverse impacts to federally listed species/cultural resources. This will result in formal consultation with regulatory agencies. Mitigation will likely be required by the regulatory agencies which may result in modifications to the project and/or mitigation through the purchase of lands or credits in a mitigation bank to offset the impacts within the project area. This option will require a large amount of time to complete the consultation process.
6. (**Fed Agency**) When compliance with ESA and NHPA is completed by a federal agency, the grantee and the grant administrator (e.g. local federal agency office, State Fire Safe Council) will be notified in writing.
 - a. If consultation was required under ESA and/or NHPA, documentation is provided to the grantee to display the measures that are required to be followed by the grantee and or federal funding agency.
7. Once all federal acts and compliance process have been complied, the release of funds to a grantee will be authorized. At this point, the grantee can start to implement the actions within the grant that can or may have effects to the environment (e.g. ground disturbance, vegetation disturbance).
 - a. Monitoring during implementation and following the completion of the project and reporting the findings may be a requirement of ESA or NHPA. Grantees and Federal agencies need coordinate on how this will be completed.
 - b. Grantee must notify the federal agency and get approval prior to changing the implementation of the project if it falls outside of the parameters specified in the NEPA document. Changes may require a re-evaluation of the NEPA decision and may require review by the regulatory agencies.

Grant Selection Process

After an applicant has submitted a concept paper through the National Fire Plan/Community Assistance Grants Clearinghouse, all concept papers are consolidated and a GIS map may be created displaying the location of the proposed project in relation to other proposed grant projects and past projects that were funded within California.

At this point, the Grants Clearinghouse Selection Committee or the Federal Agency can either chooses to select projects to fund. If the Federal Agency chooses to allow the Grants Clearinghouse Grant Selection Committee to select projects, then the Federal Agency becomes a **technical advisor** providing recommendations to the selection committee, but has no responsibility in selecting projects.

The federal Endangered Species Act (ESA) and National Historical Preservation Act (NHPA) are automatically triggered because of the transfer of federal funds. The federal agencies involved in the National Fire Plan/Community Assistance Grants Clearinghouse are responsible for complying with these two acts and providing technical advise to grantees or their consultants.

When a Federal Act is Triggered

The following are descriptions of when one of the major Federal acts is triggered. The responsibility for compliance with these laws is with the federal agencies participating in the Grants Clearinghouse. The federal agency can delegate to a grantee the responsibility in either preparing the documentation or completing the complete process. If a federal agency delegates this responsibility to a grantee, the federal agency needs to provide this delegation in writing.

As a note: When a federal agency is responsible for compliance with one or more of the following laws, they may treat the private lands as if they were federal lands when conducting their analysis.

- Endangered Species Act (ESA)

ESA is automatically triggered because of the transfer of federal funds. The federal agencies are responsible for ensuring that grant projects comply with this act.

The Section 7 Process

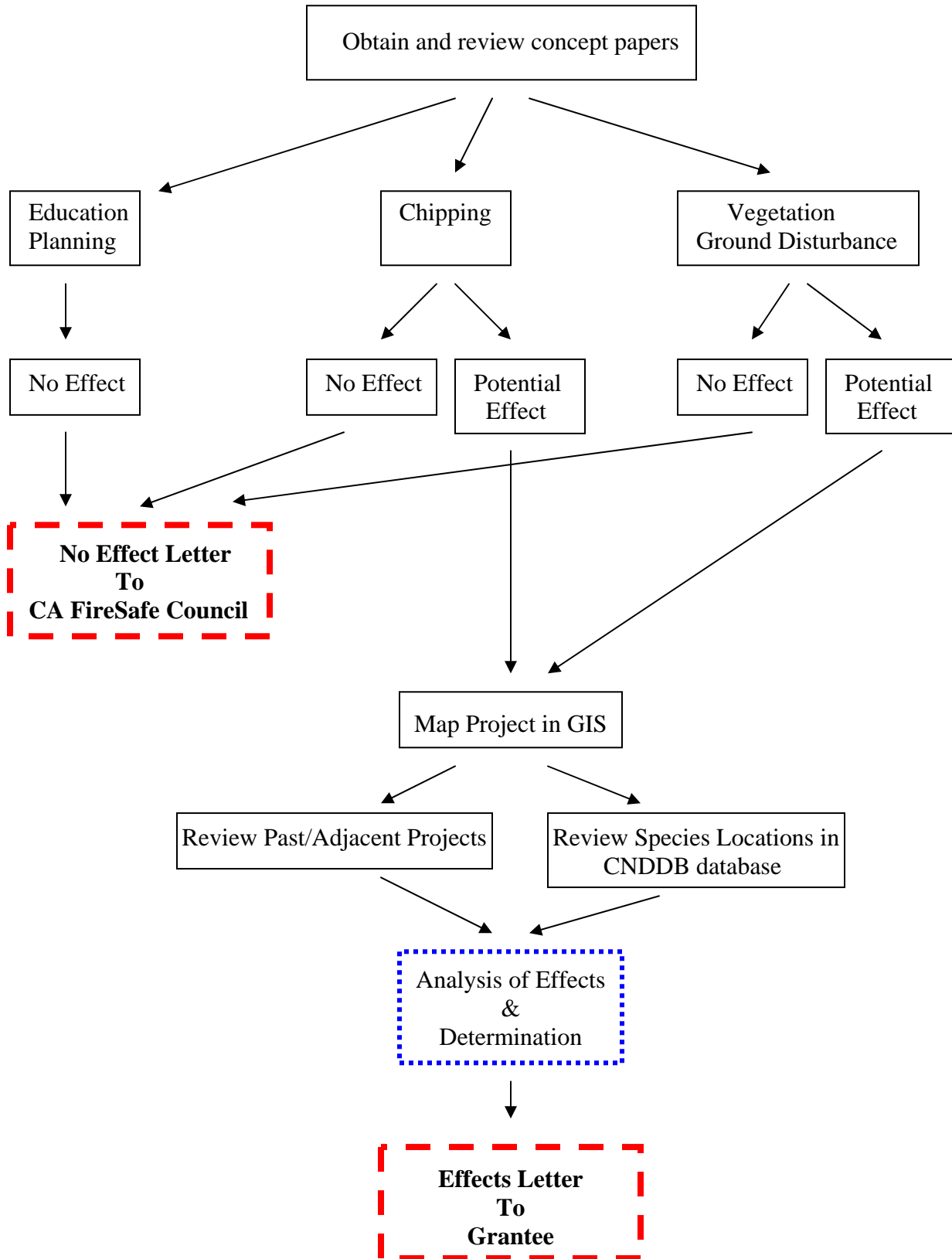
A federal agency has to review a grant project to determine if one or more actions proposed may or will have an effect to one or more federally listed species (Figure 1). The federal agency will work with the grantee to determine if effects can be mitigated through project modification; implementation of mitigation and/or avoidance measures; or a combination of the two. At this point, the federal agency will develop a Biological Assessment to document their findings. If effects can not be mitigated, the federal agency will then need to consult with either or both the US Fish and Wildlife Service and NOAA Fisheries to request concurrence on the effects analysis. This consultation can occur informally if the effects are minor. If the effects are more substantial, a formal consultation process must begin, which can take up to six months to complete, but is currently averaging about three months.

- Migratory Bird Treaty Act (MBTA)

MBTA is automatically triggered because of the transfer of federal funds. The federal agencies are responsible for ensuring that grant projects comply with this act.

A federal agency has to review a grant project to determine if one or more actions proposed may or will have an effect to one or more migratory bird species. The federal agency will work with the grantee to determine if effects can be mitigated through project modification; implementation of mitigation and/or avoidance measures; or a combination of the two. At this point, the federal agency will develop a Biological Assessment to document their findings. If effects can not be mitigated, the federal agency will then need to consult with the US Fish and Wildlife Service to request concurrence on the effects analysis. This consultation can occur informally if the effects are minor. If the effects are more substantial, a formal consultation process must begin, which can take up to six months to complete, but is currently averaging about three months.

General Steps for ESA and MBTA Evaluation of NFP Grant Projects



National Historic Preservation Act (NHPA)

NHPA is automatically triggered because of the transfer of federal funds. The federal agencies are responsible for ensuring that grant projects comply with this act.

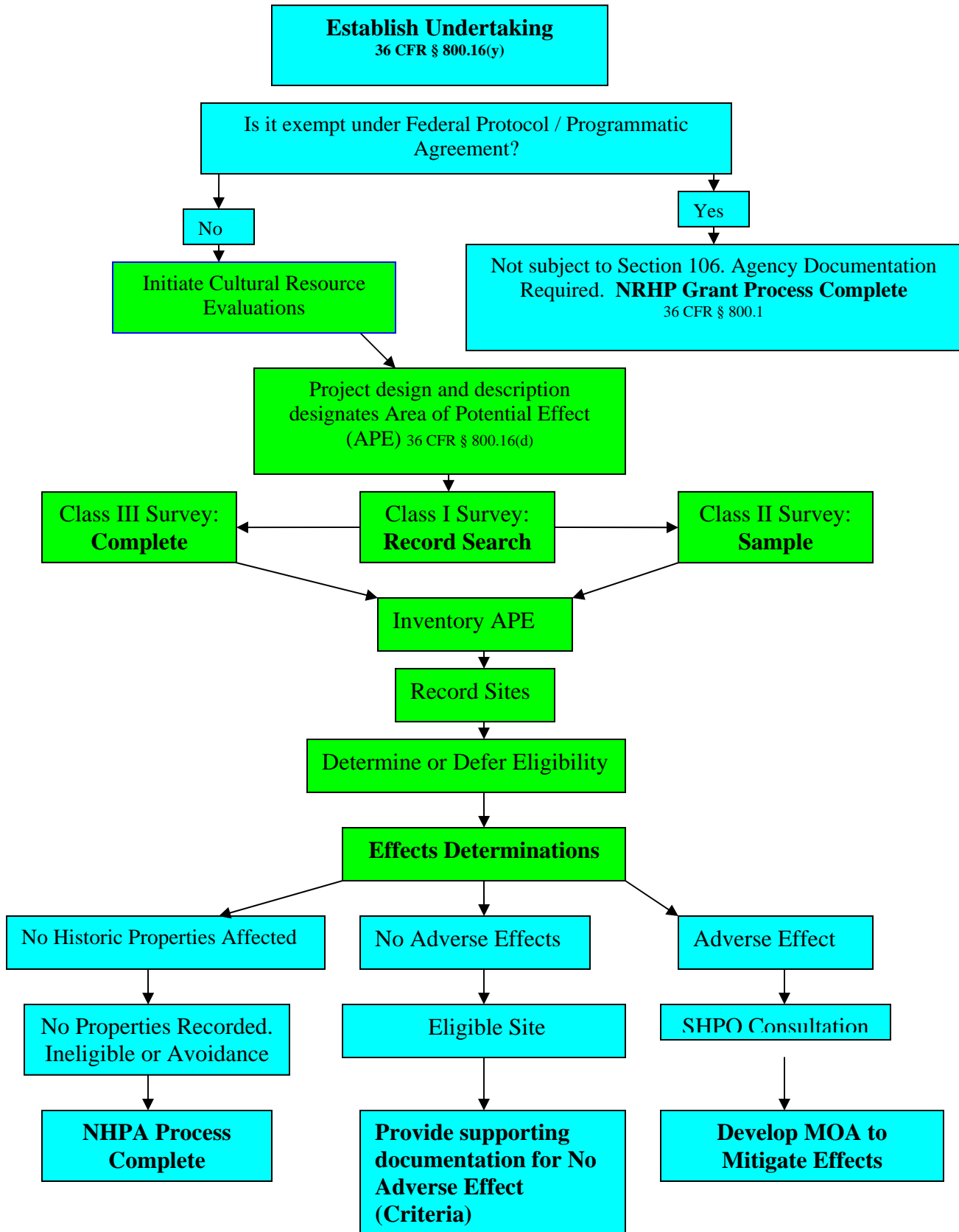
The concern related to NHPA is whether the proposed project will have adverse effects on significant cultural resources such as archeological sites and historical buildings, structures and vegetation. Significant cultural resources are called historic properties, and include those resources listed or eligible for listing on the National Register of Places (NRHP). Ground disturbance and pile burning in archeological sites will be the primary concern in most projects, although projects that involve no or minimal ground disturbance also require consideration. For example, vegetation removed from an archeological site might make it more vulnerable to artifact collecting. Historical vegetation, such as orchard trees associated with homesteads, could be removed or damaged during a thinning project.

A federal agency may conduct the fieldwork and paperwork necessary to comply with the NHPA for grantee projects. More often, however, such work will be performed by a qualified cultural resources contractor, in consultation with a federal agency, hired by the grantee.

The Section 106 Process

NHPA compliance followed in relation to the National Fire Plan/Community Assistance grants is called the Section 106 process (Figure 2). The first step in the process is determining whether a given project is considered an undertaking. This determination will be made by a federal agency. An undertaking includes any project or activity that can result in the change of the character or use of historic properties located within the Area of Potential Effects (APE), which is the geographic area or areas where the project or activity will be conducted. Generally, all projects involving ground disturbance are considered undertakings. Projects that involve hazardous fuel reduction, but no ground disturbance, may or may not be undertakings depending on whether historic properties are known or are likely to occur in the APE and the nature of those historic properties. Projects that involve no hazardous fuel reduction, such as development of Community Wildfire Protection Plans (CWPP), are not considered undertakings. Non-undertakings are given no further consideration in the Section 106 process.

The next step for each undertaking is to determine whether cultural resources are found within the APE. Some areas have been previously surveyed for cultural resources, and this information is maintained at an information center (IC) affiliated with the California Historical Resources Information Center (CHRIS). This information might include reports and maps describing and depicting the area(s) surveyed and records of any documented cultural resources. In rare cases, documented cultural resources may have been formally evaluated for significance. The entity performing the NHPA compliance will determine, based on previous survey results, the significance and nature of any previously recorded cultural resources, environmental setting, historical records and consultation with Native



American tribes and other groups, whether additional survey is required to identify historic properties within the APE. The amount of survey necessary within a given APE will generally depend on both the cultural sensitivity of the area and the nature of the proposed work. For example, an APE located on a flat stream terrace may warrant more survey effort than one located on a steep hillside. Likewise, mechanical thinning or pile burning may dictate more extensive survey than hand thinning in the same APE.

Once the cultural resources within an APE have been identified, the next step is to determine the significance of those resources. Formal determinations of significance can be complex, time-consuming and expensive. As such, it is usually desirable to assume, unless otherwise obvious, that a cultural resource within an APE is a historic property and treat it accordingly.

If cultural resources are present within an APE and the decision is made to treat them as historic properties, the effects of the project on those properties are determined. That is, do the activities associated with the project pose a threat to the significance of the historic properties? For example, mechanical thinning performed within the boundaries of an archeological site may result in impacts such as ground disturbance and artifact breakage that adversely effect the significance of that site. By contrast, hand thinning on the same site may have no effect.

There are three categories of effect used in the Section 106 process: no historic properties affected, no adverse effects, and adverse effects. The *no historic properties affected* determination is used when no historic properties are found within a given APE or historic properties are present, but the proposed activities will have no impact on the significance of those properties. *No adverse effects* determination is used when an undertaking will have impacts on a historic property, but those impacts are not sufficient to adversely impact its significance (for example, a sensitive archeological site subjected to hazardous fuel removal is temporally exposed until vegetation re-grows). *Adverse effects* determination occurs when a project will result in impacts to a historic property that diminish its significance.

The goal of every National Fire Plan/Community Assistance grant project requiring compliance with the NHPA is a *no historic properties affected* determination. The California State Historic Preservation Office is

Note:

This is a simple description for a very complex process. Please contact a neighboring federal or state agency representative if you have any questions.

Contact:

For questions and assistance on federal environmental compliance process you may contact

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