

National Historic Preservation Act Section 106 Compliance for the Regulatory Program

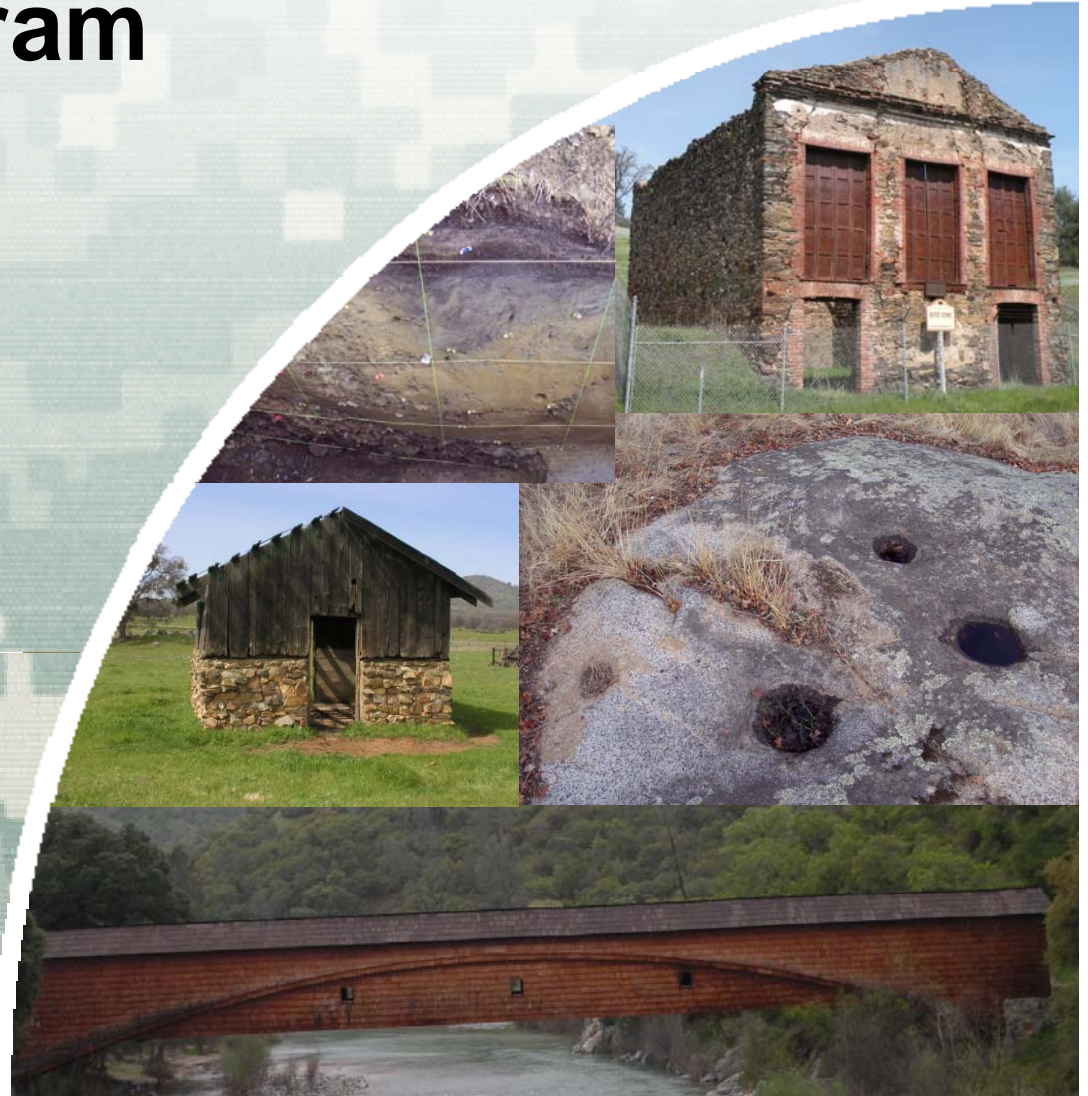
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December 5, 2013



US Army Corps of Engineers
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Section 106 of the National Historic Preservation Act of 1966, as amended

“The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and **the head of any Federal department having authority to license any undertaking shall**, prior to the approval of the expenditure of any Federal funds on the undertaking or **prior to the issuance of any license**, as the case may be, **take into account the effect of the undertaking on any district, site, building, structure, or object, that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation** established under Title II of this Act **a reasonable opportunity to comment with regard to such undertaking.”**



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33 CFR Part 325, Appendix C and Interim Guidance

- Corps' Regulatory Program's implementing regulations to take into account the effect of the undertaking on historic properties
- Provides a process for the review of all proposed permit actions
- Level of review is commensurate with impacts
- Applicants may be required to submit additional information and perform mitigation to compensate for impacts to historic properties



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- Sacramento District Regulatory Division Guidelines for Compliance with Section 106 posted at:
<http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/section106.html>
- ▶ Also posted are:
 - Link to the National Historic Preservation Act
 - Link to 33 CFR Part 325 Appendix C and Interim Guidance
 - Links to our HQ Tribal and Cultural Resources Information
 - Links to the ACHP and SHPO websites
- Importance of early communication and coordination between Federal Agencies
 - ▶ We can take advantage of existing procedures, such as Programmatic Agreements, if coordination occurs **PRIOR** to SHPO consultation
- Addressing impacts to cultural resources
 - ▶ Avoid
 - ▶ Minimize
 - ▶ Mitigate



Section 106 Guidelines Basics

- Report Format
- Project Description (often in permit application)
- Define Undertaking
- APE/Permit Area (maps)
- Literature Review
- Field Methodology
- Native American Consultation
- Interested Party Consultation (new)



Area of Potential Effect

- APE

- ▶ Appendix C does not define APE, but refers to “Permit Area”

- Permit Area

- ▶ Areas comprising the waters of the U.S. that will be directly affected by the proposed undertaking and uplands directly affected as a result of authorizing the work or structures
 - Identify area of direct and indirect project impacts within the permit area, including access, staging, and construction areas
 - Must consider all impacts to known historic properties in the permit area (discovered through archival research, National Register of Historic Places, lists of eligible properties, archaeological surveys, etc.)
 - If known historic properties are located outside the permit area, consider effects (such as visual and auditory impacts), but cannot require surveys to identify previously unknown historic properties



Consultation



Site visit in Rocklin, CA, with United Auburn Indian Community of the Auburn Rancheria representatives

- May begin at any time - the earlier the better
 - If not productive, the Corps can terminate at any time, but must notify parties
- Involve interested and consulting parties
 - May have knowledge of cultural resources that may or may not be identified by field surveys
- ALWAYS consider ways to avoid or minimize effects
- No specific process for consultation



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Section 101 of the NHPA

Section 101(d)(6)(B)

“In carrying out its responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A).”

Section 101(d)(6)(A)

“Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined eligible for inclusion on the National Register.”

If you don't ask, how will you know?

Important points to remember:

- Federally-recognized Tribes are sovereign nations
- Consultations may take longer due to internal Tribal discussion
- Many Tribes have been relocated from their traditional homeland



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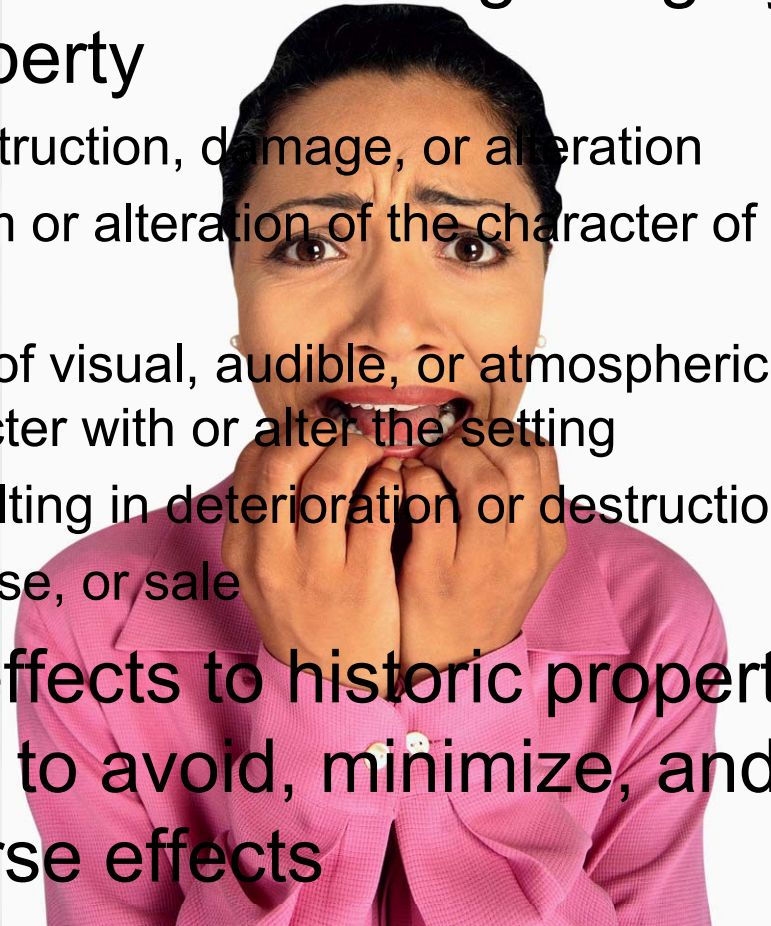
Section 106 Guidelines Con'd

- Findings (more maps)
- Determination of Eligibility
 - ▶ Eligibility Test Plan
- Determination of Effect
- Adverse Effect and Mitigation
- Monitoring Plans
 - ▶ Avoidance
 - ▶ No Adverse Effect
- Professional Qualifications



Adverse Effect

- Effect results in diminishing integrity of the historic property
 - ▶ Physical destruction, damage, or alteration
 - ▶ Isolation from or alteration of the character of the property's setting
 - ▶ Introduction of visual, audible, or atmospheric elements that are out of character with or alter the setting
 - ▶ Neglect resulting in deterioration or destruction
 - ▶ Transfer, lease, or sale
- If adverse effects to historic properties, consider alternatives to avoid, minimize, and mitigate those adverse effects



Mitigation Examples



8 Points per sqm LIDAR Bare Earth
Glenborough at Easton (Sacramento County, CA)

ECORP Consulting, Inc.
www.ecorpconsulting.com

Site capping
Sacramento
River, CA



LIDAR
Survey,
Alder
Creek
Mining
District,
CA

Structure relocation, Fort Rock, OR



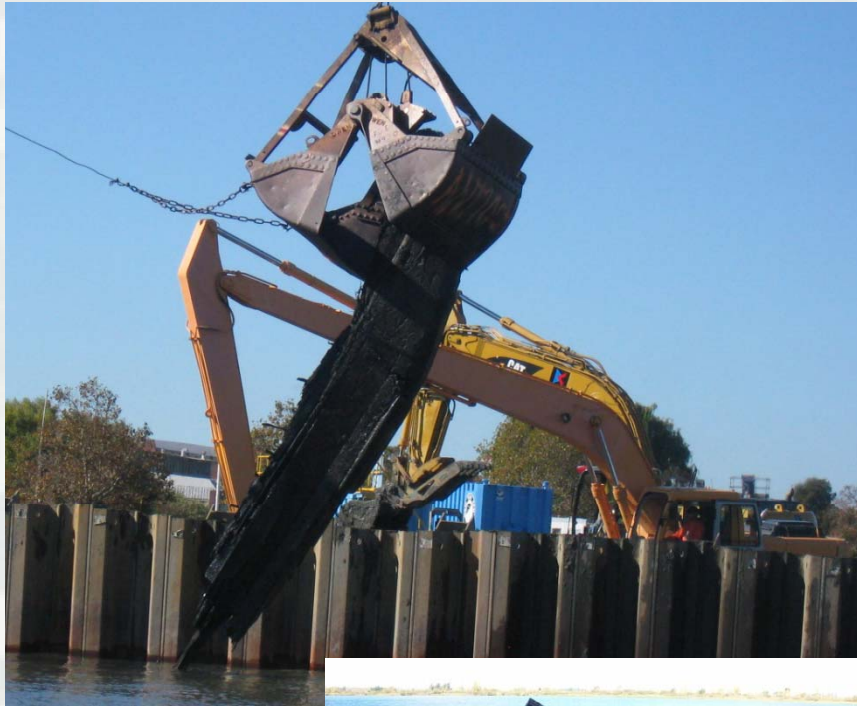
Interpretive
signage
Fort Rock, OR



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Unanticipated Discoveries

Historic Properties encountered during construction:



Unidentified
sunken vessel
discovered during
marina excavation
in Antioch, CA



- ▶ Avoid further harming site (stop construction in the immediate area, if possible)
- ▶ Notify the Corps immediately
- ▶ Corps will notify SHPO/THPO and ACHP if a potentially eligible historic property is encountered and cannot be avoided
- ▶ Corps will consider the need to suspend, modify, or revoke a permit



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Emergency Procedures

- Determine if an actual emergency
 - ▶ Knowing of a hazard for months and coming to the Corps at the last moment to meet a construction schedule is typically not an emergency
- Corps will consult with SHPO and ACHP
 - ▶ May authorize direct coordination between applicant and SHPO/ACHP depending upon circumstances
 - ▶ Document conversations, keep Corps included
- Corps will comply with Appendix C to extent time and emergency situation allows
 - ▶ Human health and safety are a priority



Questions?



Structure restoration, Victory Ranch, near Kamas, UT



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