



# GUIDELINES FOR COMPLIANCE WITH SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

March 24, 2014

**U.S. ARMY CORPS OF ENGINEERS**

**BUILDING STRONG.**

Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), requires Federal agencies to take into account the effects of their undertakings on Historic Properties and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings. Therefore, prior to the issuance or authorization of any permit under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act, the U.S. Army Corps of Engineers, Sacramento District, Regulatory Division (Corps) must consider the effect the permit may have on Historic Properties. Historic Properties may include prehistoric or historic districts, sites, buildings, structures, objects, sacred sites, and traditional cultural places, that are included in, or eligible for inclusion in, the National Register of Historic Places.

In order to comply with the NHPA, the Sacramento District Regulatory Division has prepared these guidelines to assist applicants, their consultants, and the Corps in minimizing time and effort preparing submittals to the State Historic Preservation Officer and expediting the review process. Reports not meeting the minimum guidelines will be returned to the applicant or consultant for revision.

In addition to standard professional reporting requirements, consultants should address the following elements in the preparation of cultural resources reports submitted to the Corps for compliance with Section 106 of the NHPA. It is important that the cultural resources consultant establish a working relationship with the Regulatory Project Manager, and/or District Archeologist, prior to preparing a cultural resources report. The cultural resources report must be a stand-alone document and not dependent on other reports associated with a project.

- **Project Description.** Include a complete and specific project description identifying purpose, acreage, location (including construction, staging, and access areas), construction methods, construction phasing (if any), and the elements of project construction, such as pipelines, roads, housing, etc., that have potential to affect historic properties. Such elements may include the portions of the project that will be altered, the parts that will remain unchanged, the visual impact of the project's various components, and the location and depth of ground disturbance that will occur as a result of the project's implementation.
- **Define Undertaking.** Issuance of the permit is the undertaking. Include a statement that "since the project would affect waters of the United States, the project proponent must meet requirements of Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act, and therefore, is seeking a permit from the U.S. Army Corps of Engineers, Sacramento District." Include a statement regarding what federal agency has been designated the lead federal agency for compliance with Section 106 of the NHPA if more than one federal agency is involved.
- **Area of Potential Effect (APE)/Permit Area.** The Corps shall define the APE/Permit Area for the project. Describe the horizontal and vertical (depth of ground disturbance) area of direct and indirect effects. Include a discussion on viewshed for the built environment, when appropriate. A viewshed APE may be different than a geographic APE and will require photographs looking toward and looking from the affected structure(s) as well as an analysis of how the viewshed was determined.

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□ **Maps.** Include a vicinity map, a page-size U.S.G.S map showing the anticipated APE/Permit Area, and a high quality large-scale map (1 inch = 200 feet) showing the proposed project development, and the approved or preliminary waters of the United States delineation.

□ **Literature Review.** Include a records check that is not over one year old from the appropriate records repository, as well as review of other pertinent material including, but not limited to gray literature, Sanborn maps, historic topographical maps, historic aerial photographs, or other sources outside the records check. Additional information from local sources such as historical societies and public libraries, when available, should be provided. Include records of previous surveys and previously identified historic properties, when appropriate. Include sources for identification of submerged resources, when appropriate. Describe past and current land uses in a site-specific historical context statement.

□ **Field Methodology.**

□ Provide a detailed narrative on the field methodology, including field dates, the number and/or the names of the people on the survey, as well as the qualifications of the crew chief, and the field conditions. Also include the rationale for how the field methodology is appropriate relative to both the project's potential effects on historic properties and the field conditions at the time of the inventory.

□ Identify whether the entire Permit Area was subject to a uniform field methodology, and, if not, describe where and how variations to the primary field methodology occurred. Include a map of variations to the primary field methodology, as appropriate.

□ Specifically address both surface and subsurface identification efforts. Reference any applicable state and/or Federal standards under which the survey was conducted.

□ Resources identified in field inventories completed more than 2 years old must be re-examined, and if necessary rerecorded, to determine site integrity and project effect.

□ Describe potential for subsurface archeological remains. Include statement on how that determination was made, i.e., soils maps, field observation, geotechnical explorations, etc.

□ **Native American Coordination.** Must be current, as Tribal contacts are subject to change. Letters to Tribes, both those with and without Federal recognition, and/or interested Native American individuals must be followed by telephone/email or other reasonable attempts to engage responses. Documentation of contacts and responses must be included. Lack of response must also be documented. Note, communication between consultants and Tribes or Native American individuals is considered coordination. Federally-recognized Tribes are sovereign nations and may require more formal government-to-government consultation if they so wish. The Corps will direct such consultation.

□ **Other Interested Party Coordination.** Interested parties are individuals or entities which have expressed and demonstrated a viable interest in a proposed project. Letters to interested parties must be followed by telephone/email or other reasonable attempts to engage responses. Coordination must be current and documentation of contacts and responses must be included. Lack of response must also be documented. Note, communication between consultants and interested parties is considered coordination. Interested parties may request to become consulting parties and must submit their request in writing to the Corps.

**Findings.**

Provide a detailed description of all cultural resources identified within the APE. Provide a detailed description of all previously identified historic properties located within close proximity of the APE, as appropriate. Include all applicable data forms and/or site records as an appendix to the report.

**Maps.** Include a high quality large-scale map (1 inch = 200 feet) showing the proposed project development overlaying the approved or preliminary waters of the United States delineation and the cultural resource locations, including isolates. Cultural resource locations and boundaries on the map are to be drawn to scale and not represented as symbols.

**Photographs.** Must include high quality color photographs of each cultural resource identified and also include photographs showing the environmental setting, where appropriate.

**Recommendation of Eligibility of a property for listing on the National Register of Historic Places (NRHP).** Unless otherwise determined, consultation with the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) is the sole responsibility of the Corps. Consultation with the SHPO towards compliance with Section 106 should begin early in the process. Normally, the Corps makes the final decision on eligibility with concurrence from the SHPO, thus the consultant must be clear whether this has occurred in the past (provide date of SHPO concurrence letter) or whether the eligibility recommendation is the consultant's recommendation.

Eligibility recommendation:

Must be completed for each prehistoric or historic site, district, building, structure, or object found within the APE; and

Must include an historic context statement in accordance with National Park Service, National Register Bulletin 15, and other appropriate National Register bulletins; and

Must address whether a cultural resource is or is not eligible for the NRHP under all four of the criteria, and must consider the issue of integrity of each resource. A concise, rational argument for, or against eligibility must accompany each recommendation.

**Eligibility Testing Plan.** If the eligibility of a cultural resource is in question, the consultant can submit a draft eligibility testing plan with the survey report to the Corps. It may be appropriate to include Tribes or Native American individuals, or other interested parties, in development and execution of the eligibility testing plan. The SHPO and the Corps will review and comment on or approve the eligibility testing plan for the specific sites and will advise the consultant when the testing plan may be implemented. After testing is complete, a testing report shall be submitted to the Corps so that the Corps may consult with the SHPO regarding the eligibility of the cultural resource.

**Recommendation of Effect of the undertaking on cultural resources identified as historic properties.**

For each cultural resource identified as an historic property, the consultant must discuss the specific proposed project impacts and define the effect within the Advisory Council on Historic Preservation framework at 36 CFR § 800.4(d), and, where, appropriate, 36 CFR § 800.5. Describe how much of the historic property would be affected. After the effect on each historic property is defined, the consultant must make an effect recommendation for the overall undertaking.

- **Adversely Affected Historic Properties.** A Historic Properties Treatment Plan (HPTP) and Memorandum of Agreement (MOA) will be required for adversely affected historic properties. These are sometimes combined as a second step in the Section 106 process, subject to advance SHPO approval. Typically, the MOA is developed by the Corps, though the applicant or consultant may develop the MOA with prior approval, and in consultation with the Corps. The HPTP will be developed by the applicant or consultant and is submitted through the Corps to the SHPO and ACHP with the MOA. Such documents can be provided on CDs and should be capable of being edited and not overly formatted.
  
- **Monitoring Plan.** In the instance where a cultural resource determined eligible for listing on the National Register of Historic Places is located within the Corps' APE/Permit Area, but will be avoided by the project, the consultant should submit a proposed avoidance and monitoring plan for review and comment on or approval by SHPO and the Corps. The approved monitoring plan shall be implemented at the instruction of the Corps.
  
- **Professional Qualifications.** Principal Investigators must meet the Secretary of the Interior's Standards for Professional Qualifications (48 FR 44738-44739) in the discipline germane to a particular resource type. For example, prehistoric archeologists should not identify and evaluate built environment resources without the oversight of an historian or architectural historian, nor should the reverse occur. Provide the identification and qualifications for those participating in the survey and evaluation of resources.
  
- **Report Format.** Include an Abstract which summarizes the project and findings. Include a table of contents and section headings that identify project purpose, project description, literature review, field methodology, and the remaining categories identified in the paragraphs above, in addition to background statements and any other information the consultant believes will aid in the identification, evaluation, and effect determination of the project on historic properties. Section headings are very important as they assist the reader in locating the appropriate subjects. Two complete copies of each report must be submitted.