



®GUIDELINES FOR COMPLIANCE WITH APPENDIX C OF 33 CFR PART 325 AND SECTION 106 OF THE NATIONAL HISTORIC PRESERVATION ACT

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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, Albuquerque District, Regulatory Division (Corps) must consider the effect the permit may have on historic properties. Historic properties may include, but are not limited to, prehistoric or historic districts, archaeological 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 (NRHP).

Appendix C of 33 CFR Part 325 is the Corps' procedures for the protection of historic properties. It became part of the regulations in 1986 and was established to fulfill the requirements set forth in the NHPA, other applicable historic preservation laws, and Presidential directives as they relate to the regulatory program of the Corps. However, differences in procedures under Appendix C and Section 106 of the NHPA do arise for some projects, and is generally because of the definitions of permit area (Corps' regulations) versus the area of potential effects (Section 106). The term *area of potential effects* is defined as the "geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist." The term *permit area* "means those areas comprising the waters of the United States that will be directly affected by the proposed work or structures and uplands directly affected as a result of authorizing the work or structures." Appendix C goes on to state that the following three tests must all be satisfied for an activity occurring beyond waters of the United States to be included within the permit area:

- i. Such activity would not occur but for the authorization of the work or structures within the waters of the United States
- ii. Such activity must be integrally related to the work or structures to be authorized within the waters of the United States. Or, conversely, the work or structures to be authorized must be essential to the completeness of the overall project or program; and
- iii. Such activity must be directly associated (first order impact) with the work or structures to be authorized.

In order to comply with both Appendix C and the NHPA, the Albuquerque District Regulatory Division has prepared these guidelines to assist applicants, their consultants, and the Corps in minimizing time and effort in determining the level of effort for compliance and in preparing submittals to the State Historic Preservation Officer (SHPO) and expediting the review process. Additional information on the process and requirements regarding cultural resource investigations in association with USACE permit applications is available at the following link: <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/RelatedResources.aspx>.

It is important that the permit applicant and/or the cultural resource consultant establish a working relationship with the Regulatory Project Manager prior to implementing a cultural resource investigation.

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For one thing, in certain instances the nature, scope, and magnitude of the work, and/or structures to be permitted may be such that there is little likelihood that a historic property exists or may be affected. Examples of such situations are: (1) areas that have been extensively modified by previous work; (2) areas which have been created in modern times; (3) areas that have been recently subjected to a cultural resource survey by another agency or reputable firm/consultant; (4) routine maintenance of existing drainage structures, drainage ditches, fences, and bridges that does not include changes in their location or extent; and (5) planning studies, research studies, professional services, or other administrative projects that do not include any construction activity.

If a cultural resource survey is required, the applicant and their consultant should review the applicable state guidelines (e.g. Title 4, Chapter 10 of the New Mexico Administrative Code [NMAC]) prior to conducting the investigation. Furthermore, 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 of those individuals participating in the survey and evaluation of the identified resources in the report.

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. Reports not meeting these guidelines will be returned to the applicant or consultant for revision.

□ **Project Description.** Detailed project descriptions are required in order for the USACE to assess potential effects to historic properties. As such, permit applications should include a complete and specific description of the project that identifies its purpose, location (including total acreage), construction methods, construction phasing (if any), and the elements of project construction (such as pipelines, roads, housing, staging, access areas, etc.). The elements of project construction may include the portions of the project that will be altered, the parts that will remain unchanged, visual impact of the project's various components, and the location and depth of ground disturbance that will occur as a result of its implementation.

NOTE: The submittal of a detailed project description allows the Regulatory Archaeologist to make a determination of whether or not a cultural resource survey is required to comply with Appendix C and/or Section 106 of the NHPA. In some instances, surveys may be required because the description of the scope of work provided by the applicant is not adequate for the purpose of assessing potential effects to historic properties.

□ **Maps.** Include a vicinity map (i.e. 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. If design plans are available they should also be included in the permit application package.

□ **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, Albuquerque District."

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□ **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.

□ **Literature Review.** Include a records check from the appropriate records repository (i.e. the Archaeological Resource Management System (ARMS) database), 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. Include sources for identification of submerged resources, when appropriate.

□ **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.

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

□ Resources identified during previous field inventories must be reexamined, and if necessary rerecorded, to determine site integrity and project effect.

□ **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 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. The permit area/APE needs to be clearly defined on the maps.

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

□ **Native American Consultation.** This is mandatory in many instances and must be current. Documentation of contacts must be included. 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. 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.

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NRHP-Eligibility Determinations/Recommendations. Unless otherwise specified, consultation with the SHPO and the Advisory Council on Historic Preservation (ACHP) is the responsibility of the Corps and should begin early in the process. In most cases the SHPO will make the final decision on the NRHP-eligibility status of documented cultural resources. As such, the consultant must be clear whether this has occurred in the past (if so provide the date of the SHPO concurrence letter or the Historic Preservation Division [HPD] Log Number) or whether the consultant is providing an NRHP-eligibility recommendation.

Furthermore, NRHP-eligibility determinations/recommendations:

Must be completed for each archaeological site, historic district, historic 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.

NOTE: 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. 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.

Monitoring Plan. In the instance where a historic property is located within the Corps' APE/Permit Area but will be avoided by construction activities, the consultant should submit a proposed avoidance and monitoring plan for review and approval by SHPO and the Corps. The approved monitoring plan shall be implemented at the instruction of the Corps.

Determination of Effect of on historic properties. For each cultural resource identified as an historic property, the consultant must discuss the specific 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 site would be affected.

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. These will be developed by the applicant or consultant and are submitted through the Corps to the SHPO and ACHP. Such documents can be provided on CDs and should be capable of being edited and not overly formatted.

Report Format. The cultural resources report must be a stand-alone document and not dependent on other reports associated with a project. 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.

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