



# U.S. Army Corps of Engineers – Regulatory Program Little Rock District



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

U.S. Army Corps of Engineers - Little Rock District Regulatory Division

Effective Date: September 14, 2020

### Authorities

Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended, ([54 U.S.C. § 300101 et seq.](#)) and as implemented under [36 Code of Federal Regulations \(CFR\) Part 800](#), requires federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) 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, Little Rock District, Regulatory Division (hereafter “the Corps”) must consider the effects that actions requiring permits may have on historic properties. A historic property is defined in regulation as:

“...any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places [NRHP] maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.” (36 CFR 800.16(l)(1))

The Corps Regulatory Division also uses [33 CFR Part 325, Appendix C](#) to comply with Section 106 and historic preservation statutes. Title 33 CFR Part 325, Appendix C implements and describes the procedures under which the Corps fulfills 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 of Engineers (33 CFR Parts 320-334)” (33 CFR 325, Appendix C, Part 2).

### About This Document

This document is specific to Federal undertakings as defined in 36 CFR 800.16(y) and 33 CFR 325, Appendix C, Part 1(f), and which are associated with the Corps Regulatory Program within the Little Rock District. These guidelines will be periodically reviewed and revised by the Little Rock District Regulatory Program.

This document is intended to supplement, not replace, the [Arkansas](#) and [Missouri](#) guidelines for archeological fieldwork and report writing. Due to the uniqueness of the Regulatory Program, however, adherence to the additional recommendations made within this document are intended to reduce review time by both the Regulatory Staff Archeologist and Regulatory Project Manager. The Missouri State Historic Preservation Office (SHPO) can be reached at 800-361-4827. The Arkansas Archeological Survey can be reached at 479-575-3556. The Arkansas Historic Preservation Program (Arkansas SHPO) can be reached at 501-324-9880. Applicants may also consider reviewing the Archeological Survey Standards developed by [The Osage Nation](#).

## **Professional Qualifications**

All cultural resource investigations must be supervised by a professional who meets the [Secretary of the Interior's \(SOI\) Standards for Professional Qualifications](#) (36 CFR 61, Appendix A; 54 U.S.C § 306131(a) of the NHPA; 48 FR 44716, September 29). On a project-specific basis, qualified specialists (e.g. SOI-qualified architectural historian, geoarcheologist, etc.) and analysts may also be necessary. Section 112(a)(1)(A) of the National Historic Preservation Act requires each Federal agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary (36 CFR 800.2(a)(1) and (3)). For additional information, see [Federal Register Volume 62, Issue 119, Professional Qualification Standards, dated June 20, 1997](#).

## **Background Research**

- Under Section 106, consultation with the State Historic Preservation Officer (SHPO) and the ACHP is the sole responsibility of the federal lead agency. For purposes of these guidelines and the Section 106 and Appendix C review process, the Corps is the lead Federal agency. As the lead federal agency, the Corps makes the final decision on permit area, identification methods, and eligibility and effects determinations, with concurrence from the SHPO. In the event that the consultation process has been incorrectly initiated by the consultant or applicant, the consultant or applicant should provide the Corps with copies of any correspondence from the SHPO or other consulting parties.
- Federally-recognized Tribes are sovereign nations. Consultation with Tribal Nations is the sole purview of the Corps as part of a government-to-government relationship. The applicant has the right to make contact with a Tribal Nation, but this contact does not represent government-to-government consultation for Section 106 compliance purposes.
- Perform a records check from the appropriate records repository, as well as a review of other pertinent material including, but not limited to, gray literature, Sanborn maps, historic topographical maps, historic aerial photographs, or other relevant sources. Additional information from local sources such as historical societies and public libraries, when available, should be pursued. Research records of previous surveys and previously identified historic properties, when appropriate. Analyze sources for identification of submerged resources, when appropriate. Investigate past and current land uses.

- Archeologists must assess the potential for deeply buried cultural deposits within the survey area prior to starting field investigations. At a minimum, this shall include a review of the USDA soil surveys and geologic maps. If there is a potential for deeply buried cultural deposits within the permit area, deeper subsurface investigations may be required.

## Field Investigations

Field investigations should follow the [Arkansas](#) and/or [Missouri](#) guidelines for archeological fieldwork. The following are supplemental guidelines for cultural resource investigations for projects in Arkansas and Missouri in which the Corps is the lead federal agency. It is important to note that per 33 CFR Part 325, Appendix C, the Corps determines the proposed undertaking's permit area, which is defined as "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" (33 CFR 325, Appendix C, Part 1(g)). The permit area is where historic property identification efforts, such as field investigations, will primarily be applied. However, the Corps is also responsible for "[considering] the effects of undertakings on any known historic properties that may occur outside the permit area" (33 CFR 325, Appendix C, Part 5(f)).

Since determining the size of the permit area is dependent on procedures stipulated in 33 CFR 325, Appendix C (see 33 CFR 325, Appendix C, Part 1(g)), and since the Corps also determines the level of historic property identification efforts for authorizations of any permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act (see 36 CFR 800.4 and 33 CFR 325, Appendix C, Part 5(e)), **it is highly recommended that the SOI-qualified professional contracted to identify historic properties communicates with the Regulatory Staff Archeologist, and potentially the Regulatory Project Manager, before commencing any fieldwork.**

- Notes should be kept on each shovel test documenting the shovel test location (including GPS coordinates in NAD 1983), soil stratigraphy referencing USDA soil descriptions and actual soils encountered, soil color description (Munsell color codes if possible), depth, and the presence or absence of artifacts (see Recommended Report Format [forthcoming]). A representative sample of shovel tests should be documented with photographs and profile drawings (sample specifics should be coordinated with the Corps Regulatory Staff Archeologist), all of which should be incorporated into the survey report. The survey report should also include a shovel test log and a shovel test map that clearly depicts each labeled shovel test location. Shovel tests should not be excavated at intervals greater than 20 m, unless otherwise coordinated with and determined by the Corps. Shovel tests should be *at least* 30 cm in diameter and should be *at least* 50 cm deep, unless sterile soils/sediments (i.e., devoid of cultural deposits) have not been reached, bedrock or other impediments (e.g., water) prevent deeper excavation, or there is reason to believe cultural deposits may be deeply buried.
- While pedestrian survey may be used in addition to systematic shovel testing, it should not be used in lieu of shovel testing in any area, except for those areas consisting of a slope 20 degrees or greater, or where alternative methods are coordinated with the Corps before their initiation.

Sloped areas exceeding 20 degrees should be investigated via pedestrian survey for features such as caves, rockshelters, or mine adits.

- All shovel test fill should be screened through ¼ inch mesh.
- Sites should be delineated by surface artifacts/features and shovel tests, as necessary, in a cruciform (+) pattern. When shovel testing a site to determine boundaries, a shovel test should be placed every 5 m until two (2) negative shovel tests are sequentially excavated in each direction (see [The Osage Nation's Archeological Survey Standards, Determining Site Boundary, pg. 5](#)).
- Subsurface testing methods other than shovel testing—e.g., augering, test grid excavation, backhoe trenching, probing, etc.—should be coordinated with the Corps prior to their initiation.
- Artifacts should not be collected unless prior consultation has determined it is necessary. Artifacts should be analyzed (quantified and typed) and photographed (diagnostics and representative samples) in the field and returned to the locations at which they were found.
- The applicant and consultant shall follow all applicable state and federal laws and any specific conditions instituted by the lead federal agency if human remains and/or funerary objects are discovered during field investigations. Applicable laws may include, but may not be limited to:
  - 36 CFR Part 800.13 regarding discoveries subsequent of identification efforts described in 36 CFR Part 800.4
  - [Native American Graves Protection and Repatriation Act \(NAGPRA\)](#) and its implementing regulations [43 CFR Part 10](#)
  - [Arkansas Act 753 of 1991](#)
  - [Arkansas Act 705 of 2011](#)
  - [Missouri Statute 194.406](#)
  - [Missouri Statute 194.410](#)

In the event that human remains and/or funerary objects are discovered during field investigations, the applicant or consultant should contact the Regulatory Staff Archaeologist within 48 hours of the discovery, but preferably as soon as possible.

## Survey Reports

- All reports must adhere to the [Arkansas](#) and/or [Missouri](#) guidelines. This adherence includes formatting.
- Include a standardized, easily-readable table of contents (see Recommended Report Format [forthcoming]).

- At minimum, a topographic map (1:24,000) showing the project area and aerial map(s) (at sufficient scale for labeled shovel tests, changes in survey methodology, survey transect lines, and cultural resource finds to be easily identified) should be included in the report. Aerial maps showing the locations of cultural resource finds should be separable from the main body of the report (i.e., included in an Appendix). Report authors may find that separate maps for shovel testing, survey transect lines, areas that could not be surveyed, site boundaries, and other map features are more readable if map features are too clustered together (see Recommended Report Format [forthcoming]). However, such formatting issues will ultimately be addressed during the Corps' review of the survey reports.
- Provide a detailed narrative on the field methodology, including fieldwork dates, the quantity and names of personnel on the survey, as well as the qualifications of the crew chief and crew, 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 (see Recommended Report Format [forthcoming]). Specifically address both surface and subsurface identification efforts. Reference any applicable state and/or federal standards under which the survey was conducted.
- Include a summary table of what was discovered, including isolated finds. At a minimum, this table should include: Site number, presumed age, description (e.g. lithic scatter), and NRHP eligibility recommendation (see Recommended Report Format [forthcoming]).
- 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.
- Photographs should be included within the report and include: general overview of project area by geographic/vegetation areas, cut banks, disturbances, cultural resource sites, diagnostic artifacts, representative artifacts, etc.
- As noted in the above section, a representative sample of shovel tests should be documented with photographs and profile drawings and incorporated into the report (sample specifics should be coordinated with the Corps Regulatory Staff Archeologist). The shovel test log and shovel test map would typically be included as an appendix.
- Cemeteries should be recorded as archeological sites unless communication with the Regulatory Staff Archeologist (who will consult with the appropriate SHPO) has indicated otherwise.
- Historic structures (e.g. houses, bridges) should be recorded following the recommendations made by the Regulatory Staff Archeologist who will consult with the Arkansas and/or Missouri SHPO.

- Remote sensing and/or the use of heavy machinery should only be employed after consulting with the Regulatory Staff Archeologist.
- NRHP Eligibility recommendations must: 1) be completed for each prehistoric or historic site, district, building, structure, or object found within the permit area; 2) include a historic context statement in accordance with National Park Service, [National Register Bulletin 15](#), and other appropriate National Register bulletins; 3) must address whether a cultural resource is or is not eligible for the NRHP under all four of the criteria; and 4) must consider the issue of integrity of each resource. A concise, rational argument for or against eligibility must accompany each recommendation.
- In the instance where a cultural resource determined eligible for listing on the NRHP is located within the Corps' permit area, but will be avoided by the project, the consultant should submit a proposed avoidance and monitoring plan for review and comment by the Corps and applicable consulting parties. The approved monitoring plan shall be implemented at the instruction of the Corps.
- 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 Corps, in consultation with the SHPO, 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.

**Recommended Report Format *[forthcoming]***

- This section will present a recommended report format designed for standardization and ease of review.

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