

Section 106, Cultural Resources and SMART Planning

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US Army Corps of Engineers
PLANNING SMART
BUILDING STRONG®



Purpose

- Marry the steps in the Section 106 process with the required information needed at each milestone under SMART Planning.
 - Assist Cultural Resources Specialists with planning cultural resources activities at each phase
 - Assist in the determination of “appropriate level of detail” and what is needed to get to the next milestone



ENVIRONMENTAL EVALUATION AND COMPLIANCE PROCESS

SCOPING

ALTERNATIVES MILESTONE 1

Vertical team concurrence on array of alternatives

STUDY START TO ALTERNATIVES MILESTONE

- Scoping (integrated with Plan Form). General documentation of scoping results for Report. NOI in Federal Register.
- ESA & 106 coordination initiated (See ESA Box). Consultation and coordination initiation letters.
- Initiate Cooperating Agencies. MOU.
- Initiate FWCA Coordination. Negotiate SOW & MIPR funds.
- Compile Public/Agency/Tribal concerns, ID significant resources to consider. Document.
- ID info that exists vs. inventory need for analysis. Document and Risk Register.
- Models – ID ideal model/develop model RP. Review Plan (RP) for model certification.
 - ER projects should seek certification ASAP.
- Develop environmental screening criteria. Document.
- Risk Register entries. Populate.

ALTERNATIVES EVALUATION & ANALYSIS

TSP MILESTONE

Vertical team concurrence on tentatively selected plan

AM TO TENTATIVELY SELECTED PLAN (TSP)

- Describe affected environmental/baseline. Draft into Report.
- Receive FWS draft CAR. Integrate & address recommendations.
- Alternatives Evaluation & Comparison: Draft into Report.
 - Describe environmental impacts per alternative.
 - ID mitigation measures per alternative.
- Environmental Modeling and CE/ICA analysis:
 - Ecosystem Restoration (ER): Model certified at AM; Collect data, run model; Conduct CE/ICA analysis to determine TSP. Model analysis/CE/ICA appendix.
 - Mitigation: When mitigation measures drive the costs or decision in plan selection, use/get certified model; Same process as ER above. Model Analysis, mitigation in CE/ICA.
 - All other: Describe mitigation & estimate preliminary costs; Model cert by ADM, w/model & CE/ICA complete for final Report. Describe mitigation in draft Report.
- Other Tasks & Products for Draft Report:
 - Prepare 404(b)1 analysis. Appendix to draft Report.
 - Draft Monitoring & Adaptive Management Plan (Critical in ER projects; presented at TSP). Appendix to draft Report.
 - Prepare draft BA(s), and EFH/Magnuson-Stevens determinations, if needed. Provide documents for review, determinations included in draft Report language.
 - Cultural Resources review; SHPO/THPO concurrence on APE. Document compliance in Report. Provide documentation.
 - Analysis for Prime and Unique Farmland, Wild and Scenic River, Migratory bird analysis, etc. Document compliance in Report. Provide documentation.
 - HTRW Phase 1 analysis, if needed. Survey results in draft Report.
 - Risk Register – review/update prior risks, ID new risks/tasks.

FEASIBILITY LEVEL ANALYSIS

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AGENCY DECISION MILESTONE

Agency endorsement of the recommended plan

TSP TO AGENCY DECISION (ADM)

- Release of Draft Integrated Report, with draft FONSI (if EA); EIS – File Draft with EPA. Notice of Availability in Federal Register. FONSI/NOA.
- Public meetings as needed to solicit comments.
- Respond to ATR/MSO/OWPR comments.
- Identify relevant Public/Agency/Tribal comments and develop strategy to resolve. Work on responses. Review if changes are needed to formulation to address.
- Address outstanding policy / technical issues – IEPR. Document resolution.
- Conduct Phase II HTRW, as needed. Survey.
- Conduct cultural resources field investigations (as needed, risk based). Conclusions & mitigation decision/requirements.
- Certify mitigation model (if not completed yet).
- Release of BA(s) to USFWS and NMFS. Consultation continues (if required).
 - NMFS/FWS Response to BA (30 days).
 - ESA formal consultation begins, if required
- Risk Register – Review prior entries. Update risks.

CIVIL WORKS REVIEW BOARD

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ADM TO CIVIL WORKS REVIEW BOARD (CWRB)

- Final revisions of Report based on comments. Document updates.
- ESA formal consultation continues (See ESA Box). Provide any information needed for analysis, if not in BA.
- Final FWCAR incorporated with responses. Receive FWCAR, and add as appendix to Report. Respond in the body of the Report to all recommendations.
- Update compliance sections of Report. Document status of all compliance in Report. Provide the documents/permits, etc. from other agencies demonstrating compliance process is complete and final commitments in appendix.
- NEPA comment/response complete. Document updates and provide comment/response matrix, appendix, etc. as appropriate.
- NEPA conclusions FONSI/ROD. Update FONSI with conclusions of compliance and findings. Note District Engineer signature is after ASA review. Draft ROD for HQ.
- Data collection and model run for mitigation on selected plan (quantified with certified model, checked for CE/ICA). Documentation, model analysis, CE/ICA.
- Complete Monitoring & Adaptive Management Plan. Final plan including compliance monitoring and restoration performance monitoring and triggers.

CHIEF'S REPORT

CHIEF'S REPORT

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CWRB TO CHIEF'S REPORT (CRM)

- *Note: Activities are led by HQ. Requested assistance usually includes:
 - For document including an EIS, prepare Notice for Federal Register per HQ guidance (if district will release). Notice of Availability.
 - Release Report for State & Agency review. Confirm mailing lists. Release at direction of HQ with HQ cover letter.
 - Release Final (File Feasibility Report with EPA- Notice of Availability).
 - Draft ROD completion (EIS only):
 - Update to include response to substantive comments;
 - Update any commitments.
 - Respond to significant comments in coordination with HQ.

FORMULATION & NEPA CROSSWALK

Plan Formulation Step	NEPA Compliance
■ Scope for Project	■ Scope for NEPA
■ Specify Problems & Opportunities, Objectives & Constraints	■ Describe Purpose & Need consistent with project scope
■ Inventory and Forecast Conditions (Future Without)	■ Describe existing conditions, trends, No Action alternative
■ Formulate alternative plans to address Objectives	■ Include reasonable range of alternatives that address Purpose and Need
■ Evaluate effects of alternative plans	■ Evaluate alternatives' effects to resources.
■ Compare alternative plans	■ Compare alternatives to No Action, ID the Environmental Alternative
■ Select a Tentative Selected Plan	■ Identify the Agency Preferred Plan
■ Release for Public Review	■ Release for Public Review


KEY

TEXT IN BLACK IS A TASK.
TEXT IN BLUE IS A PRODUCT.

ENDANGERED SPECIES ACT – FORMAL CONSULTATION (ESA)

Timeframes for formal consultation are established by the ESA. The Act and Section 7 regulations require that formal consultation be concluded within 90 days, and the regulations require that the final biological opinion be delivered within 45 days after the conclusion of formal consultation. During this period, the Corps should request review of a draft biological opinion. The final biological opinion must be submitted with the Final Feasibility Report.





Section 106 Process

- Step 1: Initiation of Consultation Process
 - Identify Area of Potential Effect
 - Identify State Historic Preservation Office (SHPO), Tribes, consulting parties
- Step 2: Identification of Historic Properties
 - State/National Registers
 - Existing Surveys
 - Phase I/II Surveys
 - Consultation/Coordination
- Step 3: Assessment of Adverse Effects
 - Minimize, Avoid, Mitigate
 - Consultation/Coordination
- Step 4: Resolution of Adverse Effects
 - Programmatic/Memorandum of Agreement
 - Consultation /Coordination





Scoping Phase

Alternatives Milestone

Cultural Resources Input for Alternatives Milestone

- Project Management Plan (PMP).
- Existing Conditions
- Without Project Future Conditions
 - What is effect of continued event on historic properties
- Identify Cultural Resources Activities to get to TSP
 - Develop a plan for compliance with Section 106
- Risk Register, Report Synopsis, Decision Log





Scoping Phase

Alternatives Milestone

Cultural Resources Activities

- Prepare Project Management Plan with PDT
 - Detailed activities through Alternatives Milestone; lesser detail for remainder of the study
 - Budget and schedule for the entire study
 - Environmental Assessment vs Environmental Impact Statement
 - Identify Tribes, SHPO, other consulting parties and public participation will be undertaken
 - Utilization of NEPA process for public review
 - Consultation meetings
- Track decisions and assumptions on how proceeding in Risk Register





Scoping Phase

Alternatives Milestone

Cultural Resources Activities cont'd

- Determine Area of Potential Effect (APE) with PDT
 - Engineering/Economics to identify damage centers
 - Engineering to Identify potential measures (levees, floodwalls, flood proofing, retention basins/reservoirs, etc)
 - Utilize study area boundaries
 - Consultation with SHPO, Tribes and other potentially consulting parties
- Track decisions and assumptions on how proceeding in Risk Register





Scoping Phase

Alternatives Milestone

Cultural Resources Activities cont'd

- Research Known Cultural Resources/Historic Properties (Phase IA) for existing conditions
 - State/National Registers
 - SHPO/State Museum site files/previous reports and determinations
 - Local or Regional Historical Society information
 - Site Visits
- Summarize activities and results in Report Synopsis
- Identify next activities to get to the TSP milestone





Alternatives Evaluation Analysis

Tentatively Selected Plan (TSP) Milestone

Cultural Resources Input for the TSP Milestone

- Identification of Historic Properties
 - Additional Site Visit
 - Phase IB/II? Investigations
- Development of Alternatives
- Determination of Adverse Effects
- Mitigation Requirements/Costs, if proposed
- Determination TSP
- Draft Programmatic Agreement/ Memorandum of Agreement, if necessary
- Draft NEPA/Feasibility Report
- Update to Risk Register, Report Synopsis and Decision Log





Alternatives Evaluation Analysis

Tentatively Selected Plan (TSP) Milestone

Cultural Resources Activities

- Field Investigations/Surveys, if budgeted
 - Consultation with Tribes, SHPO, other consulting parties/public involvement
- Review developed Alternatives and determine potential effects to historic properties
- Review alternatives/effects with PDT
- Revise alternatives with PDT to minimize/avoid adverse effects





Alternatives Evaluation Analysis

Tentatively Selected Plan (TSP) Milestone

Cultural Resources Activities

- Develop Mitigation costs for each alternative for input to Cost Engineering
 - Conceptual mitigation plan (activities and costs) for each alternative
 - Use examples from other projects
 - 1% Rule for Archaeological Data Recovery
- Selection of TSP
- Prepare Draft Programmatic or Memorandum of Agreement
 - Consultation with SHPO, Tribes and other interested parties
 - Coordination with the Advisory Council on Historic Preservation (ACHP)
- Prepare input to NEPA/Feasibility Report



Programmatic Agreement vs. Memorandum of Agreement

Programmatic Agreement: A document that serves as a long term road map to identify the activities that will be undertaken post-authorization for the identification of historic properties and the determination of adverse effects on those historic properties when the effects on historic properties cannot be fully determined prior to the approval of an undertaking (36 CFR 800.14.b.1.ii).



Programmatic Agreement vs. Memorandum of Agreement

Memorandum of Agreement: A document that identifies the site specific treatment and resolution of adverse effects to a specific historic property (36 CFR 800.6.c).





NEPA AND SECTION 106

Coordination with NEPA: Agency Officials should ensure the EA, Finding of No Significant Impact (FONSI), EIS or Record of Decision (ROD) includes the identification of historic properties, assessment of effects and consultation leading to resolution of any adverse effects (36 CFR 800.8.a.3)

All relevant Correspondence and draft PA/MOA in Draft EA/EIS for public review

All relevant Correspondence and final/executed PA/MO A for Final EA/EIS.



Feasibility Level Analysis

Agency Decision Milestone


Cultural Resources Input to Agency Decision Milestone

- Public Review/Public Meetings
- Receive Agency, Agency Technical Review (ATR) and Public Comments
- Independent External Peer Review (IEPR) comments, if conducted
- Vertical Team endorsement of project

Activities

- Response to comments
- Editing input to Draft NEPA/Feasibility Documents
- Revisions to draft PA/MOA





Feasibility Level Analysis Agency Decision Milestone

Cultural Resources Activities

- Review all comments
- Update Risk Register, Report Synopsis, Decision Log
- Participate in Agency Decision Milestone
- Respond to comments
- Edit input to Draft NEPA/Feasibility Documents
- Revise draft PA/MOA based on public comments
 - Consultation with ACHP, SHPO, Tribes, and consulting parties





Feasibility Level Analysis

Civil Works Review Board

Cultural Resources Input

- EN conducts Optimization
 - Scaling of project to maximize performance
 - May result in changes to selected alternative
- Value Engineering Study Prepared
 - Project review to identify alternative methods to improve functionality and/or cost-effectiveness
- Execute PA/MOA





Feasibility Level Analysis Civil Works Review Board

Cultural Resources Activities

- Coordination with optimization/VE study teams
- Review project changes
- Finalize and execute PA/MOA
- Revise input to Final Feasibility/NEPA documents
 - Final reports should include executed agreement
 - Include mitigation language in FONSI/ROD



Chief's Report

- Activities are conducted by HQUSACE, with reach back to District for questions
- Circulation of Final Report and NEPA document
- Draft Record of Decision, if EIS prepared
- Development of PMP for PED/Construction



Questions?

Type questions in the chat box.
We will answer as many
as time allows.

For more information:
<http://www.corpsplanning.us>



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