

Cultural Resource Laws

Or, What Does the Alphabet
Soup of Acronyms All Mean?

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Federal Vs. State

- National Environmental Policy Act (NEPA)
- National Historic Preservation Act (NHPA)
- Applies to federal actions (NASA, DOE)
- California Environmental Quality Act (CEQA)
- Public Resources Code Sections 5020-5029; 5097
- Applies to state actions (Boeing via DTSC)



National Historic Preservation Act (NHPA)

- Section 101: Establishes the National Register of Historic Places (National Register; NRHP)
- Section 106: Requires federal agencies to take into account effects of undertakings on resources eligible for the NRHP
- Section 110: Defines responsibilities of federal agencies to preserve historic properties under their control



What is the National Register?

“ Districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering and culture.”

- Maintained under the Secretary of the Interior (NPS, Keeper)
- Submittals through the State Historic Preservation Officer (SHPO)
- Guiding regulations posted at 36 CFR parts 60 and 63



National Register Criteria

- A. Events
- B. People
- C. Type
- D. Information

Typically over 50 years old unless exceptional; and must retain several of the "seven aspects of integrity"



Section 106 of the NHPA

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 or independent agency 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.



"The Regs"

- Implementing regulations posted at 36 CFR Part 800 (ACHP oversees)
- Sixteen pages of guidelines interpret one paragraph of statute
- This is the core of most cultural resource management

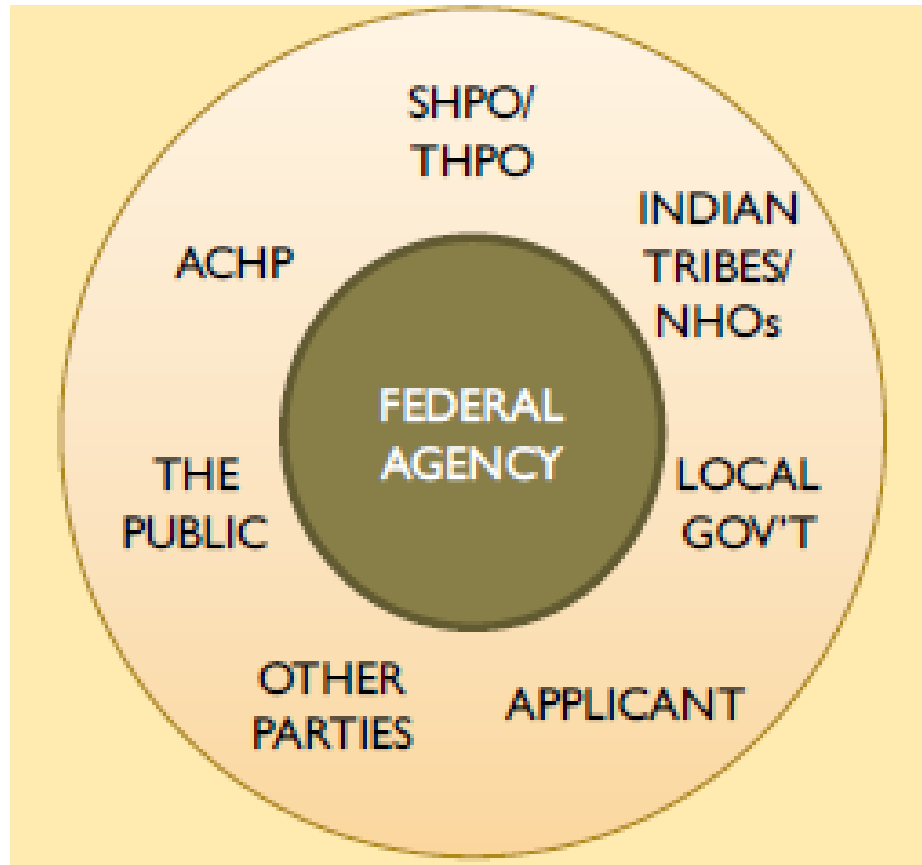


The Section 106 Process

- Identify historic properties
- Assess project effects
- Seek measures to avoid, minimize or mitigate adverse effects



Section 106 Participants



Important Section 106 Definitions

- **Undertaking** = a project, activity or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency; carried out by or on behalf of a Federal agency; carried out with Federal financial assistance; requiring a Federal permit, license or approval



Important Section 106 Definitions

- **Historic property** = any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the NRHP; including artifacts, records and remains that are related to or located within such properties



Important Section 106 Definitions

- **Area of Potential Effects**=
the geographic area or areas
within which an undertaking
may directly or *indirectly* cause
alterations in the character or
use of historic properties



Important Section 106 Definitions

- **Programmatic Agreement** = a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program or complex undertaking on historic properties



National Environmental Policy Act (NEPA)

- Implementing regulations at 40 CFR Parts 1500-1508 (CEQ oversees)
- Effects considered include aesthetic, historic and cultural
- “Cultural resources” under NEPA cover a wider range, including collections, sacred sites and non-NRHP eligible sites



NEPA and NHPA

Section 106

- Undertaking
- APE
- Adverse Effect (on NRHP characteristics)
- Resolution of Effects
- MOA or PA

NEPA

- Action
- Affected Environ
- Significant Impact (context, intensity)
- Mitigation Monitoring Plan
- ROD



California Register of Historical Resources (CRHR)

Includes NRHP properties, state historical landmarks above #770, points of historical interest, local historical resources

- Maintained under the State Historical Resources Commission
- Submittals through the State Historic Preservation Officer (SHPO)
- Guiding regulations posted at PRC 5024.1
- Similar criteria to NRHP, but for California context



California Environmental Quality Act (CEQA)

“A project that may cause a substantial adverse change in the significance of an **historical resource** is a project that may have a significant effect on the environment.” (PRC Section 21084.1)

- CEQA guidelines at 14 CCR 15000-15387



California Environmental Quality Act (CEQA)

- PRC Section 21083.2 requires the lead agency to determine whether a project may have a significant effect on “unique” archaeological resources
- ...an archaeological artifact, object or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, meets criteria (information, special quality, association w/ person or event)



California Environmental Quality Act (CEQA)

- Requires lead agency to make reasonable efforts to preserve in place (avoidance, conservation easements, capping, park/open space)
- Otherwise, mitigation measures are required, including excavation
- Must include provisions for discovery during construction



A Word About Sacred Sites/Sacred Lands

- Executive Order 13007 – Indian Sacred Sites (federal lands; accommodation and avoidance of adverse effects)
- Traditional Cultural Property as per NHPA
- California Native American Heritage Commission Sacred Lands File Inventory (PRC 5097.9)



A Word About Human Remains

- Native American Graves Protection and Repatriation Act (NAGPRA)
- California Health & Safety Code 7050.5 (coroner, NAHC) and PRC 5097.98 (designation of MLD)



Cultural Resource Review Status at SSFL

- NASA – Completed Section 106 Process; NEPA is concluding
- DOE – Completed Section 106 Inventory; NEPA is commencing
- Boeing – Recently completed inventory
- DTSC – Site-wide CEQA is commencing



Cultural Resource Challenges at SSFL

NASA and DOE – Subject to AOCs:

- exception for “Native American artifacts that are formally recognized as cultural resources”

Does this mean a cultural resource by NEPA standards, an historic property per the NRHP, a unique archaeological resource, an historical resource per the CRHR, a resource recorded with CHRIS?



Cultural Resource Challenges at SSFL

- NASA Section 106 Inventory level of effort:
 - Why have so many more sites been found everywhere else?
 - Background research on Burro Flats and TCP study deferred as mitigation



Cultural Resource Challenges at SSFL

- How do you mitigate for landscape transformation impacts on sacred sites/sacred lands?
- Coordination, or lack thereof, of NEPA (NASA and DOE) and CEQA (DTSC) reviews



QUESTIONS?

