

## Section 106 Compliance

**T**HE PROCESS of Section 106 compliance is provided by regulations issued by the ACHP under its rulemaking authority (NHPA Section 211). The regulations, “Protection of Cultural resources” (36 CFR § 800), outline a five-step process, often called the “Section 106 Process,” that is designed to identify possible conflicts between historic preservation objectives and a proposed activity and to resolve those conflicts in the public interest through consultation. Neither the NHPA nor the Council’s regulations require that all cultural resources must be preserved. They only require the Army to consider the effects of proposed Army undertakings on cultural resources. Section 106 of the NHPA directs that when federal funds are expended on an undertaking, prior to agency approval of the undertaking, the effect of that undertaking on cultural resources must be taken into account, and the Advisory Council on Historic Preservation be given a reasonable opportunity to comment on the undertaking.

Section 106 also mandates protection of cultural resources that have not yet been discovered, as in the instance of buried archeological deposits. Buried archeological deposits on federal property may also be protected by ARPA, which permits the assessment of criminal and civil penalties for noncompliance. Failure to take the effects of an undertaking on cultural resources into account IAW NHPA Section 106 and 36 CFR § 800 can result in formal notification from the ACHP to the Secretary of the Army of foreclosure of the ACHP’s opportunity to comment on the undertaking pursuant to the NHPA. A notice of foreclosure can be used by litigants against the Army in a manner that can halt or delay critical mission activities (AR200-4,23,b(2)).

For the purposes of this ICRMP, any project or other activity on Fort Bragg qualifies as an undertaking if the project or activity alters or changes the characteristics of a property that is included in or eligible for inclusion in the NRHP. A Phase I archeological inventory survey must be accomplished on all areas that have not been previously surveyed. Prior to the initiation of any activity on the project site, persons meeting the professional qualification standards established by the Secretary of Interior (36 CFR § 61 Appendix A), will determine whether or not cultural resources are present in the project Area of Potential Effects (APE), and

evaluate any discovered archeological sites or other properties. If cultural resources are found on the project site or within the project APE and determined eligible, and the effect of the project on the cultural resources is determined to be adverse, the North Carolina SHPO, the ACHP, the Native American Tribes and the interested public, must be granted the requisite time declared by law (36 CFR § 800.1(c)), to comment on this determination, prior to the resumption of project activities. Project APEs include the actual project site as well as adjacent or noncontiguous areas where project activities may effect the character of a cultural resource.

## General Procedures

Work orders are sent to ENRD, which then disseminates information about them to all interested activities, or to those activities that have a vested interest in the work order. CRP archeologists review the work orders to determine if the project area has been archeologically surveyed, if there are known sites within the project APE, and if historic structures, landscapes, or districts will be affected. If it is determined by the cultural resource managers that a cultural resource will be affected, or if more information is needed to make that determination, the cultural resource managers will notify the project manager of the specific Section 106 requirements that must be met before the project may proceed. Section 106 compliance procedures may follow one of two pathways:

1. The following procedures will be used if there are no cultural resources in the project APE:

(a) If a cultural resources survey has been completed and the area has little or no potential for deeply buried archeological sites as determined by the Fort Bragg archeological site predictive model, and no known historic buildings, landscapes or districts are in the APE, the cultural resource manager will notify the project manager, that Section 106 compliance is complete within five (5) business days of receiving project notification

(b) If a cultural resources survey has been completed and no known historic buildings, landscapes or districts are in the APE, but the area has a potential for deeply buried archeological sites as determined by the Fort Bragg archeological site predictive model, the cultural resource manager will notify the project manager that an archeologist will monitor all mechanical or other excavations in the project APE. If cultural resources are discovered during the monitoring process, the procedures outlined in

SOP #6 for the Emergency Discovery of Archeological Deposits will be implemented.

(c) If no cultural resources survey has been completed, the cultural resource manager will conduct a cultural resources survey following the procedures outlined in SOP #5, Field Survey Procedures or arrange to have the APE surveyed by a cultural resources firm. The cultural resource manager will notify the project manager of the survey results within 15 business days of survey completion.

2. If there are cultural resources present in the project APE, the cultural resource manager will evaluate the cultural resources IAW the procedures outlined in 36 CFR § 800.4(c) and take the following actions:

(a) If the cultural resource is determined not eligible for the NRHP, the cultural resource manager will issue a Determination of No Effect and notify the project manager.

(b) If the cultural resource is determined to be eligible or potentially eligible for the NRHP, the following procedures will be implemented:

(1) The cultural resource manager and the project manager may agree upon a plan for avoiding adverse effect to the cultural resources. Such plans may be developed in consultation IAW Section 106. The cultural resource manager will notify the project manager that an archeologist must monitor all mechanical or other excavations in the project APE and will periodically inspect the cultural resources in the project APE to determine the success of the avoidance strategy.

(2) If the cultural resources can be avoided by relocation of the project to an alternate site, Section 106 review procedures of the new site will be initiated IAW Section 1 of this SOP.

(3) If adverse effect to the cultural resources cannot be avoided, the cultural resource manager will initiate consultation with the North Carolina SHPO and other parties IAW 36 CFR § 800.5(e). Consultation may result in a two or three party Memorandum of Agreement (MOA) IAW 36 CFR § 800.5(e)(4). If one of the consulting parties terminates consultation, Fort Bragg will request ACHP comments pursuant to 36 CFR § 800.6(b). Fort Bragg shall consider the ACHPs comments in reaching a final decision on the proposed undertaking. The cultural resource manager shall ensure that the results of the final decision is reported to the ACHP IAW 36 CFR § 800.6(c)(2).

## Part 2: Standing Operating Procedures \_\_\_\_\_

The cultural resource manager will routinely monitor the effectiveness of the coordination procedures by visiting project sites that are nearby cultural resources or that are located in areas likely to contain deeply buried archeological sites as identified by the Fort Bragg archeological site predictive model. Inadvertent damage to cultural resources will be reported to the North Carolina SHPO.