



PUBLIC NOTICE

PUBLIC NOTICE PURSUANT TO 33 USC 408 (SECTION 408)
PERMISSIONS TO ALTER US ARMY CORPS OF ENGINEERS PROJECTS AND THE
NATIONAL HISTORIC PRESERVATION ACT

DEVELOPMENT OF A PROGRAMMATIC AGREEMENT TO GOVERN THE
IMPLEMENTATION OF THE SECTION 408 PROGRAM IN THE LOS ANGELES DISTRICT

**U.S. ARMY CORPS OF ENGINEERS
LOS ANGELES DISTRICT**

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Public Notice No.: 408-SPL-PA with SHPO
Comment Period: 2021-10-19 to 2021-11-18

TO INTERESTED PARTIES

The United States Army Corps of Engineers (USACE), Los Angeles District (SPL), is initiating the process to develop a Programmatic Agreement (PA) pursuant to Section 106 of the National Historic Preservation Act 1966, as amended (NHPA)¹. This notice is intended to notify the public in accordance with 36 CFR 800.2(d) that SPL proposes to develop a PA to govern implementation of the Section 408 Program in SPL, pursuant to 36 CFR 800.14(b). SPL is seeking public comment on the development of a PA.

The NHPA and the Advisory Council on Historic Preservation's regulations implementing NHPA Section 106² require Federal agencies to take into account the effect of their undertakings on historic properties during the planning process and consult with the State Historic Preservation Officer (SHPO) and other consulting parties regarding these effects. Issuance of a Section 408 Permission is considered an undertaking pursuant to 36 CFR 800.16(y). The PA, if executed, will address the effects of proposed undertakings on properties that are eligible for or listed on the National Register of Historic Places, including districts, archaeological sites, buildings, structures, and objects that are significant in American history, architecture, archaeology, engineering, and culture. The PA will allow SPL to coordinate NHPA Section 106 reviews with its evaluation of the proposed action's potential for significant impacts to the human and natural environment required by the National Environmental Policy Act 1969, as amended (NEPA)³.

In accordance with Section 14 of the Rivers and Harbors Act of 1899, as amended, codified at 33 U.S.C. 408, it is generally unlawful for entities to occupy, alter, obstruct, or impair the

¹ Pub. 54 U.S.C. § 306108, [http://uscode.house.gov/view.xhtml?req=\(title:54%20section:306108%20edition:prelim\)](http://uscode.house.gov/view.xhtml?req=(title:54%20section:306108%20edition:prelim)).

² 36 C.F.R. Part 800, <http://www.achp.gov/regs-rev04.pdf>. See also: <http://www.achp.gov/docs/citizens-guide-2015.pdf>.

³ Pub. 42 U.S.C § 4321 et seq. <https://www.epa.gov/laws-regulations/summary-national-environmental-policy-act>

usefulness of USACE civil works (CW) projects, such as levees, floodwalls, floodways, jetties, seawalls. However, the Secretary of the Army may grant *permission* for temporary or permanent use, occupation or alteration of any USACE CW project, if the Secretary determines that the activity will not impair usefulness of the project and is not injurious to the public interest, while at the same time reviewing it for compliance with other environmental laws and regulations. The USACE developed an Engineering Circular (EC), entitled, Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408 (EC 1165-2-220), which more specifically delineates the process for reviewing Section 408 Permission requests.

On September 15, 2021, SPL formally proposed to the California SHPO its intent to develop a PA pursuant to Section 106 of the NHPA (36 CFR 800.14(b)(1)). A review of NHPA Section 106 consultations conducted under the Section 408 Program in the past 10 years, found that effects on historic properties are similar and repetitive and have overwhelmingly resulting in findings of No Historic Properties Affected or No Historic Properties Adversely Affected. . Typical Section 408 Permission requests include:

1. Pipeline crossings around, through, and under levees, floodwalls, flood risk management channels, and navigation channels, via horizontal directional drills, jack and bore, open cuts, ramp-overs, and floodwall penetrations.
2. Utility line work, both underground and overhead, including associated structures and support poles (fiber optic, potable water, recycled water, stormwater/drainage, sanitary sewer, brine line, natural gas, cable, and electrical).
3. Wet weather/water quality monitoring stations.
4. Culverts, drainage pipes, and drainage ditches.
5. Minor modifications to the USACE CW project in support of vehicular bridge construction, including bridge widening and pier nose extensions on previously evaluated, non-eligible bridges.
6. Pedestrian, equestrian and bike bridges.
7. Bank stabilization and erosion control features, erosion repair, and erosion control.
8. Landscaping and site grading.
9. Fences, bollards, gates, poles, posts and station markers that individually require less than 1 square foot of surface disturbance.
10. Bike trails, jogging trails, walking trails, signage, lighting, and other similar operational, recreational, and decorative features.
11. Soil investigations, including geotechnical borings, cone penetration tests, piezometers, and inclinometers.
12. Stairs and handrails.
13. Levee ramps, maintenance roads, and crossings.
14. Riprap and grouted stone in channels and around structures.
15. Floodway restoration projects.
16. Retaining walls.
17. Water supply wells, and monitoring wells.

The PA would be governed solely by the process defined at 36 CFR Part 800 and would not be administered under the USACE Regulatory Program provisions found at 33 CFR Part 325, Appendix C and associated guidance. The PA would solely apply to the Section 408

Program and would not include any SPL Operations and Maintenance activities that take place on federally owned, SPL managed property. Any Section 408 Permission request that would also require a permit from the USACE pursuant to section 404 of the Clean Water Act and/or section 10 of the Rivers and Harbors Act would require separate SHPO consultation.

Please provide comments on or before November 18, 2021. Comments and questions may be addressed to Dr. Meg McDonald, Archaeologist, Regional Planning Section, Planning Division by telephone at (213) 452-3849 or via email at alison.m.mcdonald@usace.army.mil or to Mr. Priyodarshi Majumdar, Senior Project Manager and Environmental Coordinator, Section 408 Program, Engineering Division, by telephone at (213) 452-3661 or via email at priyodarshi.majumdar@usace.army.mil.

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