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Modernize Civil Works Federal Register Notice



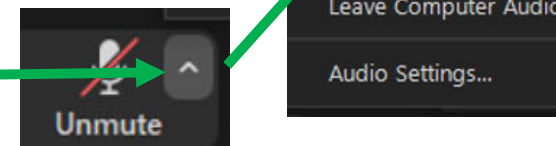
Overview Meeting

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The slides for this meeting will be posted to Army’s webpage and the meeting content will be recorded and posted to Army’s webpage (<https://www.army.mil/asacw>).

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Modernize Civil Works Federal Register Notice

Overview Virtual Meeting
June 22, 2022

Assistant Secretary of the Army (Civil Works)

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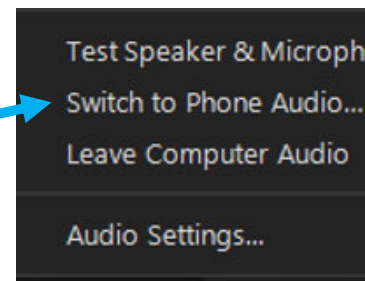
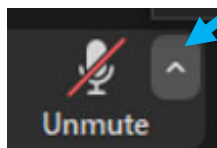
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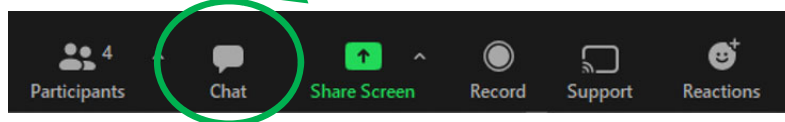


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Meeting Format and Ground Rules



- This is a meeting open to the public.
- The objective of today's meeting is to:
 - Provide an overview of the policy initiatives to Modernize Civil Works as described in the Federal Register notice.
- There will be no comments received during this informative overview session.
- If you have any clarifying questions please send them to:
usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil.
- This overview meeting will be recorded and posted along with this slide deck on the Army's website: <https://www.army.mil/asacw>.

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Introductions



- **Michael L. Connor**, Assistant Secretary of the Army (Civil Works) (providing recorded opening remarks)
- **Eric Bush**, Chief of Planning and Policy Division at Headquarters, U.S. Army Corps of Engineers
- **Stacey Jensen**, Assistant for Regulatory and Tribal Affairs in the Office of the Assistant Secretary of the Army (Civil Works)

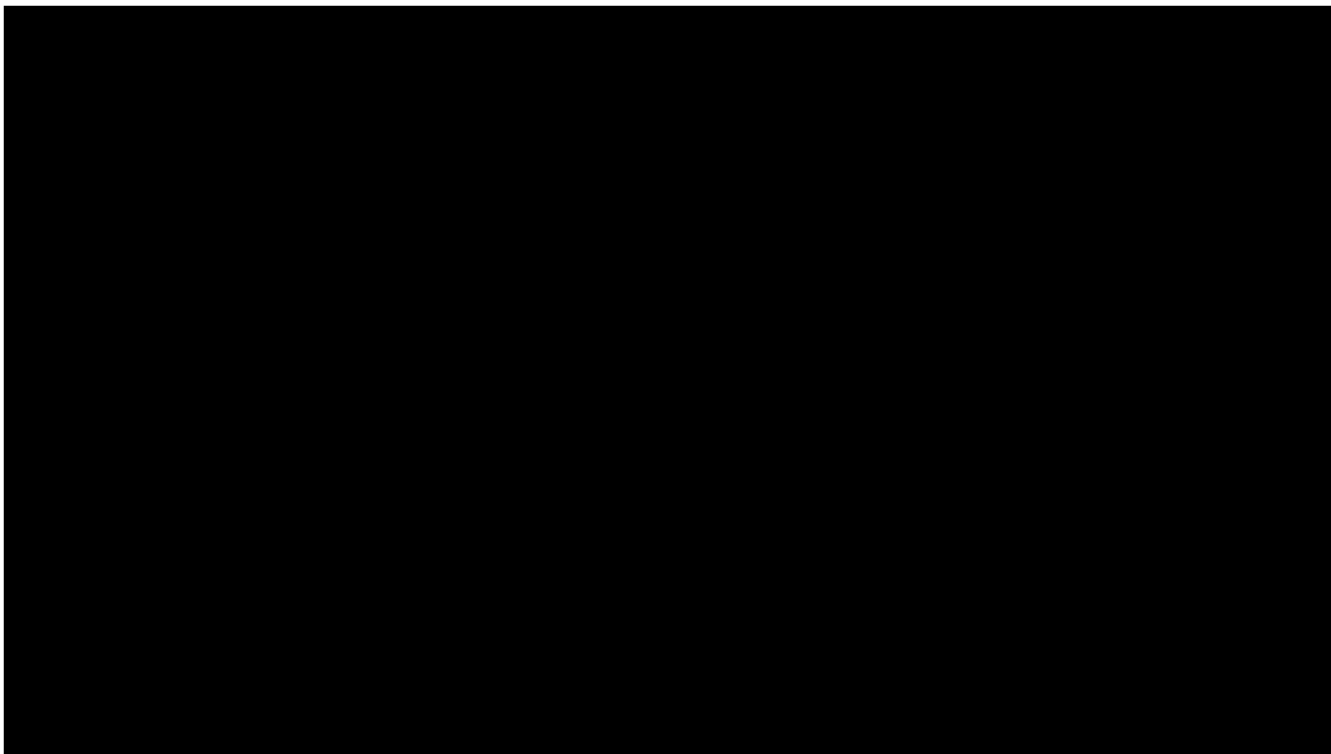
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Michael L. Connor – ASA(CW)



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Eric Bush

HQUSACE, Chief of Planning and Policy Division

Opening Remarks

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ASA(CW) Priorities



- **Modernize Civil Works programs to better serve the needs of disadvantaged communities.**
- **Strengthen communications and relationships to solve water resource challenges.**
- **Build innovative, climate-resilient infrastructure to protect communities and ecosystems.**
- Upgrade the Nation's waterways and ports to strengthen supply chains and economic growth.
- Invest in science, research and development to deliver enduring water-resource solutions.

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Modernize Civil Works Effort



- Army Civil Works, to include the Corps, published a Federal Register notice (FRN) on June 3, 2022, to announce an effort to modernize and advance the Corps' Civil Works program through a number of related policy initiatives consistent with Administration priorities and statutory authorities.
- A primary focus of the modernization effort is to identify ways to better serve the needs of Tribal Nations and other disadvantaged and underserved communities.
- Before deciding on specific future actions regarding the priority policy initiatives, the Army wants to gather public and Tribal input to help shape future decision-making.

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Modernize Civil Works Effort



- The FRN's intention is to gather oral and written input that will be used to inform future decision-making related to:
 1. Tribal Consultation Policy update.
 2. Comprehensive guidance on the Tribal Partnership Program.
 3. Rulemaking action on the Corps' Regulatory Program's implementing regulations for the National Historic Preservation Act at 33 CFR 325, Appendix C.
 4. Rulemaking action on Principles, Requirements, and Guidelines.
 5. Environmental Justice policy.
 - Including, Section 160 of the Water Resources Development Act of 2020 draft definition of "economically disadvantaged community."

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Tribal Consultation Policy Update

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Tribal Consultation Policy - Background

- On January 26, 2021, President Biden issued the Presidential Memorandum, *Tribal Consultation and Strengthening Nation-to-Nation Relationships*.
- The Memorandum called on each federal agency to engage in regular, meaningful, and robust consultation and to implement the policies directed in Executive Order 13175 of November 6, 2000, *Consultation and Coordination with Indian Tribal Governments*.
- In addition, President Biden issued Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, directing agencies to consider environmental and social justice in their mission areas.

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Tribal Consultation Policy - Background



- The Corps' Tribal Consultation Policy was issued in November 2012, which replaced the Corps' Tribal Policy Principles (1998 and 2010).
- It provides details regarding Tribal consultation specific to the Corps' authorities and responsibilities.
- The Army and the Corps is committed to ensuring the Corps' Policy is reviewed and updated to promote early, regular, meaningful, and robust consultation consistent with its missions and authorities.





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Tribal Consultation Policy – Current Contents

- Definition of “Consultation”:
 - Open, timely, meaningful, collaborative and effective deliberative communication process that emphasizes trust, respect and shared responsibility;
 - To the extent practicable and permitted by law, consultation works toward mutual consensus and begins at the earliest planning stages, before decisions are made and actions are taken;
 - An active and respectful dialogue concerning actions taken by the Corps that may significantly affect tribal resources, tribal rights (including treaty rights) or Indian lands.
- Consultation will be an integral, invaluable process of the Corps’ planning and implementation processes.

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Tribal Consultation Policy – Current Contents

- Requests for consultation by a Tribe to the Corps will be honored.
- Potentially affected Tribes will be contacted sufficiently early to allow a timely review of the proposed action and their comments will be taken into consideration.
- Consultation is generally conducted at the district or division level of the Corps.
- Dispute resolution process will be developed during consultation process.
- Consultation procedures may be developed at the local level to meet the needs of a particular Tribe.
- Emphasizes Corps support of Tribal self-determination, self reliance and capacity building.

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Tribal Consultation Policy Update – Initial Review



- The Army has preliminarily identified several areas which may be included in an update to the Tribal Consultation Policy:



- Consistent with the Consolidated Appropriations Act of 2004, as amended, the Corps will consult with Alaska Native Corporations on the same basis as Indian Tribes under Executive Order 13175.
- Address provisions on culturally-sensitive information consistent with DoD Instruction 4710.02, dated September 24, 2018. Army has an obligation to take into account confidentiality concerns raised by Tribes. Army recognizes that a Tribe may wish to keep confidential some of the culturally sensitive information it provides during consultation.



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Tribal Consultation Policy Update – Initial Review



- In March 2019, the Government Accountability Office (GAO) issued a Report, “Tribal Consultation: Additional Federal Actions Needed for Infrastructure Projects”, which included a recommendation to document in the agency’s Tribal Consultation Policy how agencies will communicate with Tribes regarding how Tribal input from consultation was considered in agency decisions on infrastructure projects.



- The Army intends that the policy update will include a requirement to provide a written response to Tribes on how Tribal input was considered in the decision-making process for all consultations.

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Tribal Consultation Policy Update – Regulatory Program



- Currently, the Corps' Regulatory Program relies on existing regulations which provide very limited references to Tribal consultation.
- There is no consolidated comprehensive guidance specific to the Regulatory Program for Tribal consultation.
- Tribes have indicated that the lack of regulations or specific policy suggests that the Corps' Regulatory Program is not committed to consulting with Tribes.
- Army wants to make clear that the Tribal Consultation Policy applies to the Regulatory Program and seeks input on whether additional changes may be needed to best incorporate the Regulatory Program.

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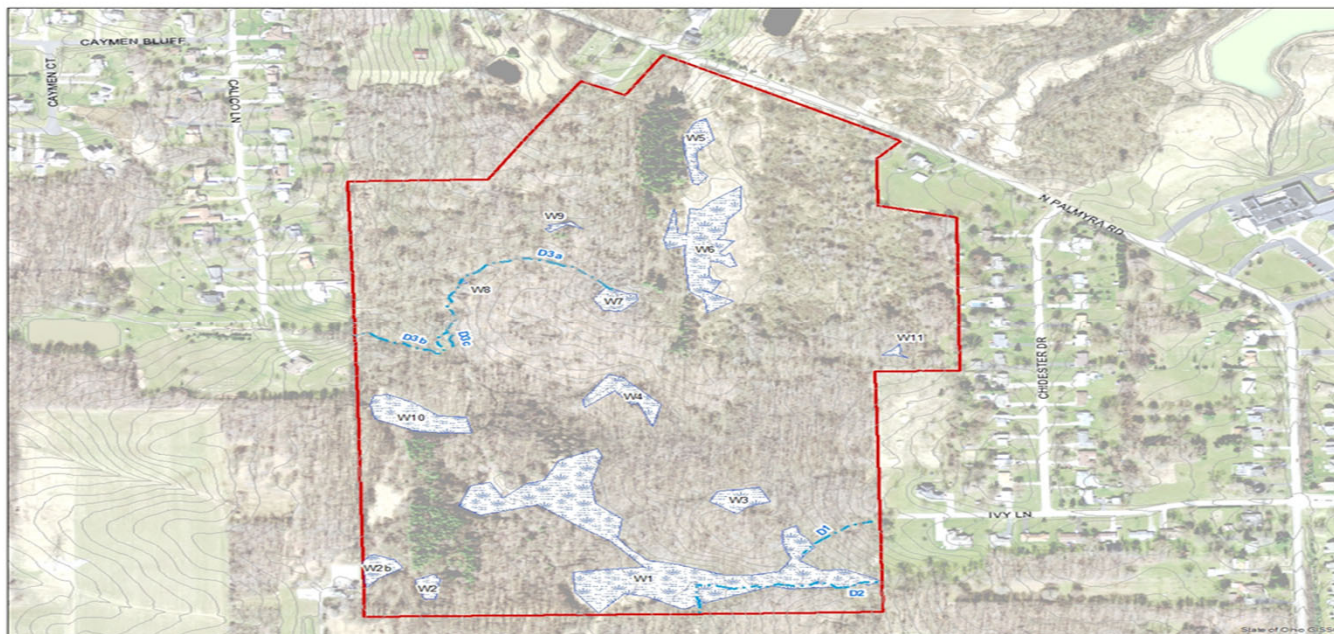


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Tribal Consultation Policy Update – Approved Jurisdictional Determinations (AJDs)



- The Army intends to address Tribal consultation requirements for AJDs issued by the Regulatory Program.
- An AJD is Corps documentation of the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel.





Tribal Consultation Policy Update – Approved Jurisdictional Determinations (AJDs)

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- Some Tribes have questioned previous issuances of AJDs, which are final agency actions under the Administrative Procedure Act, without pre-decisional government-to-government consultation.
- Tribes may have information, including Indigenous Knowledge (IK), that may assist in making such a determination.
- The Army solicits input on conducting Tribal consultations on AJDs as a policy matter and the procedures specific to the Regulatory Program's implementation of the policy.



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Tribal Consultation Policy Update – Additional Input

- The Army also welcomes feedback related to other key issues:
 - Identification of ways in which existing policy has or has not worked.
 - Specific procedures that should/could be identified to ensure that consultation is regular, meaningful, and robust.

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Tribal Partnership Program Comprehensive Guidance

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Tribal Partnership Program - Background



Section 203 of WRDA 2000, as amended, authorizes the Program which includes:

- Water-related planning activities - study, design, and construction
- Must substantially benefit Indian Tribes
- Includes flood risk management, environmental restoration and protection, navigation, and preservation of natural and cultural resources, watershed assessments and planning activities/technical assistance
- Located:
 - Primarily within Indian Country (18 U.S.C. 1151)
 - Jurisdictional area of an Oklahoma Tribe (as determined by the Secretary of the Interior as eligible for trust land status)
 - Proximity of an Alaska Native Village

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Tribal Partnership Program - Background

Allows for the completion of feasibility studies, design, construction, watershed studies, and technical assistance.

Programmatic Design and Construction Authority

- Design and construction of water resources development projects or separable elements not more than \$18,500,000 Federal (set by Congress)
- Studies exceeding the \$18,500,000 Federal cost require separate construction authorization from Congress

Preservation of Natural and Cultural Resources

- Must be related to a water resources development project

Studies not Intended for Construction

- Watershed assessments or stand-alone water-related planning activities
- Feasibility-type report without recommendations for resource planning

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Tribal Partnership Program - Background

Cost Share

- Feasibility 50% federal/50% Tribal
- Watershed Assessments 75% federal/25% Tribal

In-kind Services

- 100% of Tribal cost share can be fulfilled through contribution of in-kind services

Adjusted Cost Share Waiver – Section 1156 of WRDA 1986, as amended

- Waives the cost share amounts owed by a Tribe up to a certain amount
- Applies to feasibility studies and construction
- FY22 Adjusted Waiver: \$530,000
- Waiver limit includes an annual inflation adjustment (Section 135 WRDA 2020)

Ability to Pay

- Results in further reduction of cost-share amount owed by the Tribes
- Per capita income must be less than the per capita income of 2/3 of the counties in the U.S.

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Tribal Partnership Program - Examples



- **Pueblo of Santo Domingo Watershed Assessment**
- The purpose of the study is to examine flooding, erosion, and environmental restoration challenges, and to develop a comprehensive watershed management plan with a focus on developing a drought resiliency plan.

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Lower Brule Sioux Tribe Sewage Lagoon Protection Ecosystem Restoration Project

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Wata Onazin (Boat Park) Recreation Area

- | | |
|---|---|
| 1 Swimming Area | 11 Boat Ramp |
| 2 Beach, Picnic Shelters, Grills, and Benches | 12 Boat Staging Area |
| 3 Parking Area | 13 Boat Access to River |
| 4 Basketball Court | 14 Group Gathering Area/Interpretive Signage |
| 5 Existing Playground | 15 2-Mile Cycle Loop Trail (no motorized vehicles), Benches |
| 6 Horseshoe Courts | 16 Cottonwood and Willow Tree Plantings |
| 7 Vault Toilets | 17 Wetland |
| 8 Fish Cleaning Station | 18 Entrance Road and Walking Path |
| 9 Walking Path, Observation, Shorefishing Access, and Benches | |



The project is designed to abate erosion that poses an imminent threat to the Lower Brule sewage lagoons and the town's infrastructure, and to address habitat degradation that has occurred along the shoreline of Lake Sharpe.

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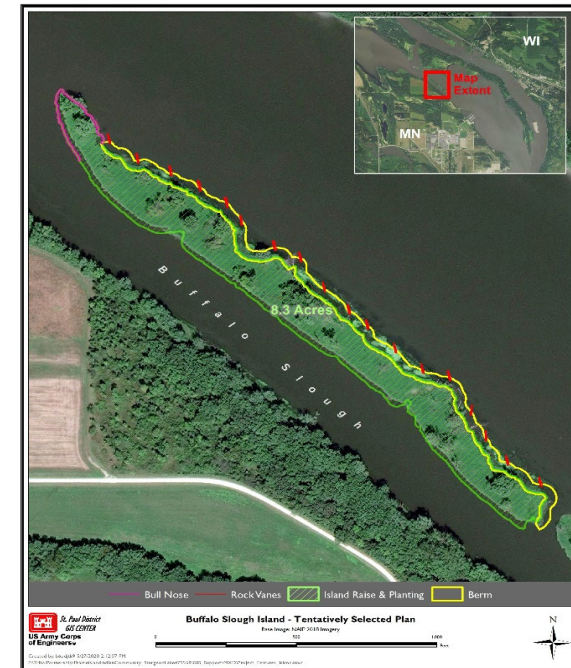
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Prairie Island Sturgeon Lake Habitat Restoration, MN



- Physical construction anticipated to be completed October/November 2022
- The purpose of the project is to address sedimentation, erosion and degradation of culturally significant habitat on Prairie Island Indian Community's tribal land in Sturgeon Lake.



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Existing Tribal Partnership Program Guidance



- The Corps currently uses the Tribal Partnership Program Implementation Guidance from WRDA 2016 Section 1121 as the primary source for implementing procedures for the Program along with several other sources of implementation guidance related to previous WRDA provisions.
- It provides cross-references to other sources of guidance on specific topics related to the Program.
- The ASA(CW) identified a need for consolidated comprehensive guidance on the Tribal Partnership Program as well as a need to provide further details on specific topics for transparency and clarity to ensure the Program reaches its maximum potential.

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Tribal Partnership Program Draft Comprehensive Guidance Overview



- Chapter 1: Program Overview
- Chapter 2: Feasibility Phase Leading to Congressional Authorization
- Chapter 3: Programmatic Feasibility Phase
- Chapter 4: Programmatic Design and Implementation Phase
- Chapter 5: Tribal Partnership Program Watershed Studies
- Chapter 6: Water-Related Planning and Feasibility-Like Studies
- Chapter 7: Other Provisions

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Tribal Partnership Program Draft Comprehensive Guidance Overview

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General Topics Covered

- ★ Purpose/Applicability
- ★ Definitions
- ★ Authorities
- ★ Roles and Responsibilities
- ★ General Principles
- ★ How to initiate
- ★ Coordination procedures
- ★ Project Management Plan and Milestones
- ★ Public involvement and review components
- ★ Review Processes
- ★ Draft Agreements
- ★ Approval requirements
- ★ Completion of phases
- ★ Termination of phases
- ★ Cultural Resources
- ★ Real Estate

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Tribal Partnership Program Draft Comprehensive Guidance Input



- Are there additional topics that should be covered in the guidance?
- Is additional clarity needed regarding the cost share waiver and/or ability to pay provisions, and if so, are there recommendations for clarification?
- In what ways can the Corps improve communication and increase awareness with Tribes regarding the Tribal Partnership Program?
- Are there barriers for Tribes to participate in the Tribal Partnership Program? If so, are there recommendations to overcome those barriers?
- Are there best practices from implementation of the Tribal Partnership Program that we can be sure to incorporate?

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Appendix C

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Section 106 of the NHPA - Background

- Section 106 of the National Historic Preservation Act (NHPA) requires that “the head of any Federal department...having authority to license any undertaking,...prior to the issuance of any license..., take into account the effect of the undertaking on any historic property.”
- The Advisory Council on Historic Preservation (ACHP) oversees federal agency compliance with the NHPA and issues regulations which define how Federal agencies meet their statutory responsibilities under Section 106 of the NHPA.
- The ACHP regulation is found at 36 CFR 800 (the 800 regulations), which has been updated since initial promulgation to account for NHPA amendments.

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Corps' Implementing Procedures for Section 106



- Army Civil Works programs, other than the Corps' Regulatory Program, use the ACHP's 800 regulations for federal agency compliance with Section 106 of the NHPA.
- The Corps' Regulatory Program promulgated separate regulations which govern its procedures relative to Section 106 of the NHPA in 1990 in response to its limited scope of statutory authorities and permit process requirements (33 CFR 325, Appendix C).

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Appendix C - Background



- The Corps issued an Advance Notice of Proposed Rulemaking (ANPRM) in 2004 to gather input to update Appendix C. Options presented included:
 - Revise Appendix C to incorporate current requirements and procedures in the NHPA/800 regulations.
 - Revoke Appendix C and use 800 regulations for all permit applications.
 - Revoke Appendix C and use 800 regulations for individual permit applications and an ACHP program alternative for general permits.
 - Revoke Appendix C and develop non-regulation alternate procedures in accordance with 800 regulations.

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Appendix C - Background



- The Corps has not updated Appendix C in response to amendments to the NHPA.
- The Corps issued interim guidance in 2005 and 2007 to account for amendments to the NHPA.
- They are designed to work in conjunction with Appendix C and address consideration of historic properties during the Corps permit process to address ACHP revisions to the 800 regulations.

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Appendix C - Background



- There has been longstanding disagreement between the Corps and ACHP regarding differences between Appendix C and the 800 regulations.
- Major differences include:

ISSUE	APPENDIX C	800 REGULATION
Scope of Undertaking Subject to Review	<ul style="list-style-type: none">• Permit Area	<ul style="list-style-type: none">• Area of Potential Effects
Tools to Resolve Adverse Effects	<ul style="list-style-type: none">• Memorandum of Agreement• Permit Conditioning	<ul style="list-style-type: none">• Memorandum of Agreement• Programmatic Agreement

- There are also timeline differences for the review process.

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Undertaking

APPENDIX C	800 REGULATION
...means the work, structure or discharge that requires a Department of the Army permit pursuant to the Corps regulations.	...means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those...requiring a Federal permit, license or approval.

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Scope of Undertaking Subject to Review Permit Area vs Area of Potential Effects

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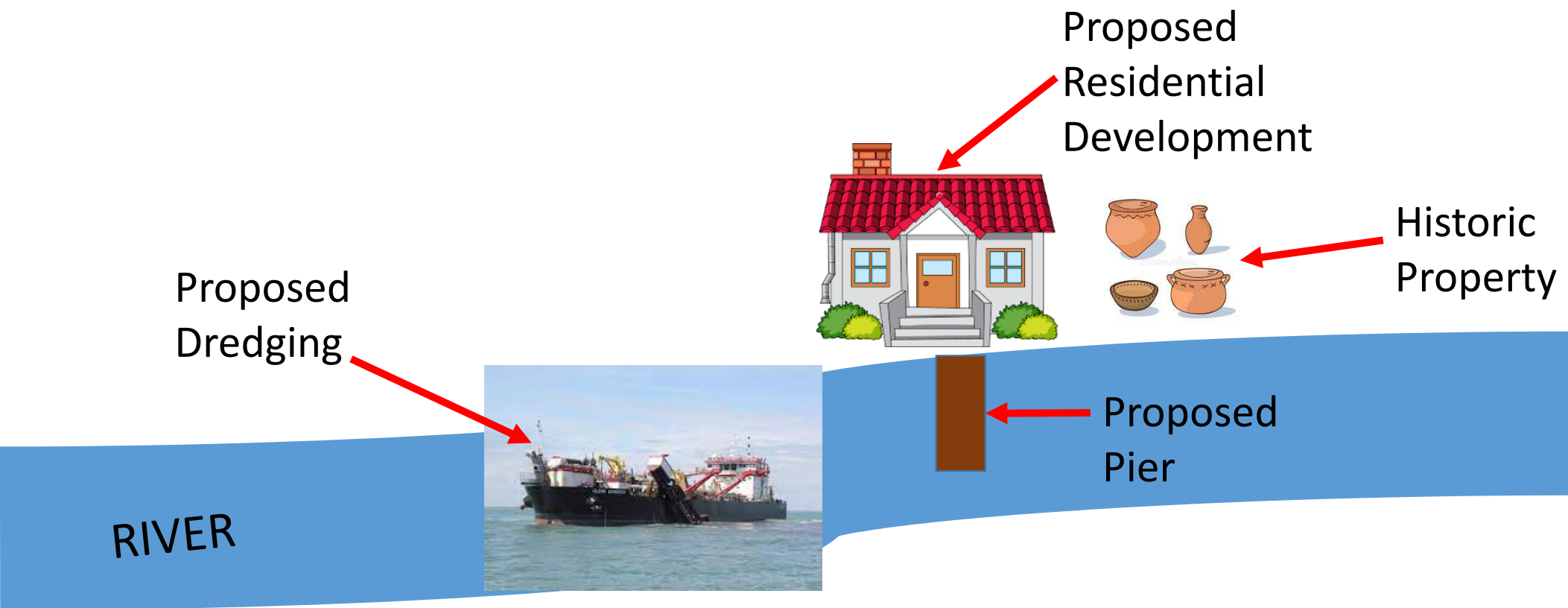
APPENDIX C	800 REGULATION
<p>“Permit area”...means those areas comprising the waters of the United States that will be directly affected by the proposed work or structures and uplands directly affected as a result of authorizing the work or structures. The following three tests must all be satisfied for an activity undertaken outside the waters of the United States to be included within the "permit area":</p> <ul style="list-style-type: none">(i) Such activity would not occur but for the authorization of the work or structures within the waters of the United States;(ii) Such activity must be integrally related to the work or structures to be authorized within waters of the United States. Or, conversely, the work or structures to be authorized must be essential to the completeness of the overall project or program, and(iii) Such activity must be directly associated (first order impact) with the work or structures to be authorized.	<p>“Area of potential effects”...means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.</p>

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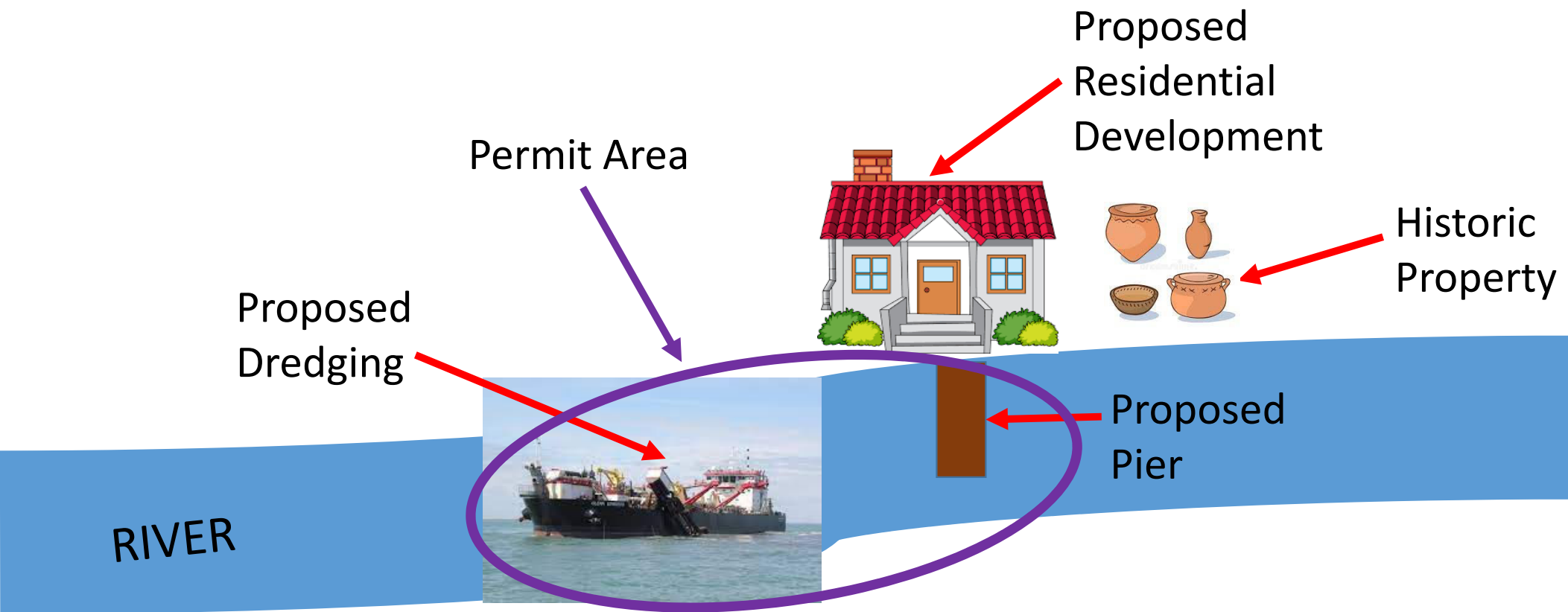
UNCLASSIFIED Proposed Residential Development, Dredging, and Recreational Pier Example





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Proposed Residential Development, Dredging, and Recreational Pier Example – Appendix C

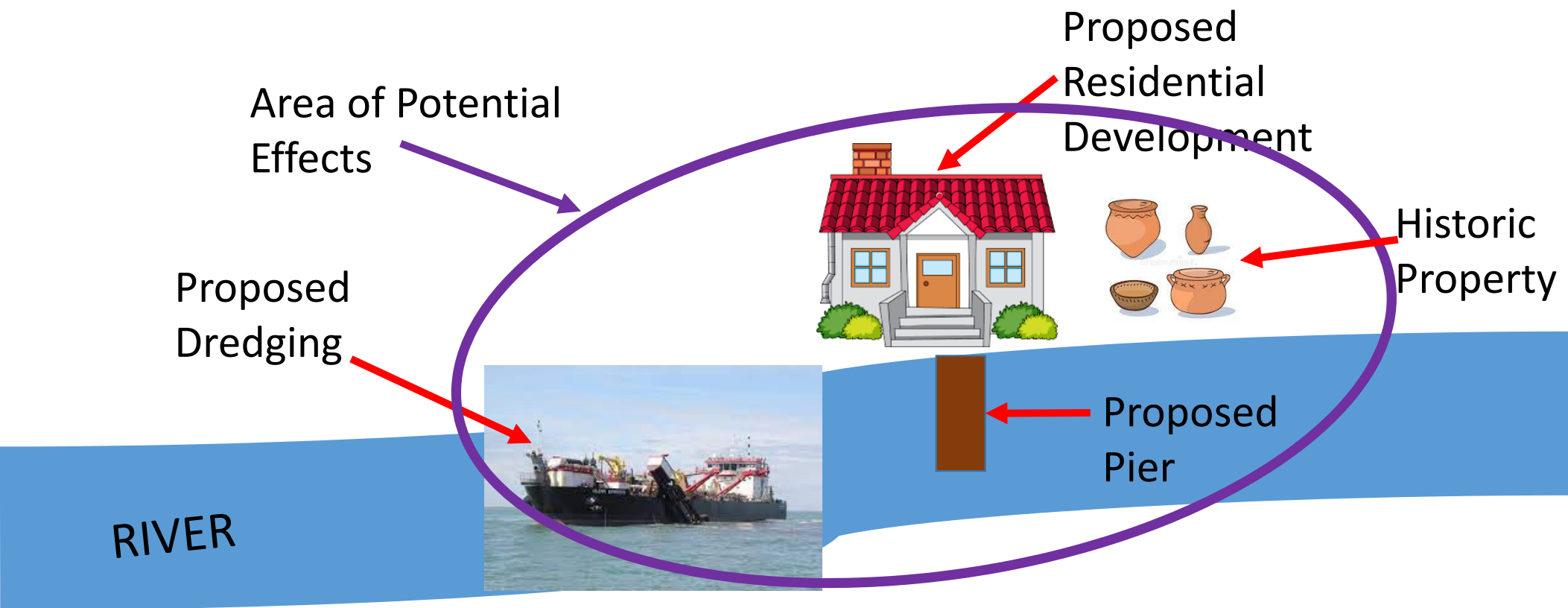


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Proposed Residential Development, Dredging, and Recreational Pier Example – 800 Regulations



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Appendix C - Background



- The Corps' reliance on Appendix C and interim guidance in lieu of the 800 regulations:
 - Can lead to inconsistency and confusion among the regulated public, State and Tribal Historic Preservation Offices, Tribes, and others;
 - Has resulted in lengthy and challenging consultations; and
 - Some Tribes have stated that the Corps' Regulatory Program is not meeting its statutory and Tribal trust responsibilities.
- Rulemaking on Appendix C is an Army priority policy initiative.
- In particular, Army seeks input on what may be some of the questions that may need to be addressed by not using Appendix C? What are the current options for a path forward? Are these the same or similar options as under the 2004 ANPRM?

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Appendix C - Background

- There are five ACHP 800 Regulations Program Alternatives (two of which are potentially most relevant to the Regulatory Program).

PROGRAM ALTERNATIVE	OBJECTIVE
<i>Alternate Procedures</i>	<i>Agency-wide restructuring of the review procedure.</i>
<i>Programmatic Agreements</i>	<i>Resolve adverse effects when effects are repetitive or are regional or national in scope.</i>
Exempted Categories	Exempt a program or category of undertakings from further review if potential effects are foreseeable and likely to be minimal or not adverse.
Standard Treatments	Establish standard methods for treatment of a category of effects, undertakings, or historic properties according to best practices.
Program Comments	ACHP issues comments on a program or class of undertakings in lieu of commenting on a case-by-case basis.

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Appendix C - Stakeholder Engagement Questions



- Through this effort, the Army wants to best ensure compliance with the NHPA and ACHP's 800 regulations as well as to best reflect the Administration's policy priorities.
- The Federal Register Notice (FRN) posed a series of questions to assist in receiving input for this effort which include:
 1. What is the best approach to modernize Appendix C, including consideration of the options provided in the 2004 ANPRM?
 2. Should the Corps rely on the ACHP's 800 regulations and rescind Appendix C? If so, is clarifying guidance needed on the scope of the area of potential effects for the Corps' Regulatory Program?
 3. Would development of a Program Alternative allow for clear and consistent implementation procedures, as well as improved Tribal consultation?

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Principles, Requirements, and Guidelines (PR&G)

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PR&G - Background

- Principles and Requirements for Federal Investments in Water Resources (Mar 2013); and the Interagency Guidelines (Dec 2014), together comprise the Principles, Requirements, and Guidelines (PR&G).
- PR&G revised the 1983 Principles & Guidelines (P&G) as called for in Water Resources Development Act (WRDA) of 2007, through an interagency process led by the Council of Environmental Quality.
- PR&G provides a common framework and comprehensive policy and guidance for analyzing a diverse range of water resources projects, programs, activities, and related actions involving Federal investment in water resources.

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PR&G - Background



- Applies to a wider range of federal agencies and actions.
- Includes projects, plans, and programs.
- Strives to maximize public benefits relative to public costs.
- Public benefits encompass environmental, economic and social goals.
- No hierarchy exists among the three goals.
- Can include monetary and non-monetary effects and quantified and unquantified measures.
- Provides more flexibility to develop and to select alternatives that have trade-offs among economic, environmental and social goals.
 - Currently, the Corps primarily focuses on selecting alternatives based on the national economic development benefits.



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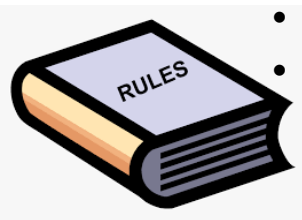
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PR&G - Agency Specific Procedures (ASP's)

- Sec 110 of WRDA 2020 directs Army to issue final ASP's necessary to implement the PR&G.
- Show how the Corps will apply the PR&G to its missions and authorities.
- Will increase consistency and compatibility in Federal decision making to include considerations such as:
 - Analyzing a broader range of long-term costs and benefits
 - Enhancing collaboration
 - Including more thorough & transparent risk and uncertainty analyses
 - Improving resilience for dealing with emerging challenges, including climate change
- Does not affect the Corps' authorized missions and cost share policies.
- Administrative Procedures Act rulemaking process.
 - Institutionalize and make binding the PR&G procedures for the Corps
 - Ensures consistency in implementation and demonstrates commitment to PR&G
 - Goal is to publish a proposed rule for public review and comment in winter 2022



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PR&G - Objectives for ASP's (p1)

- Consider a broad suite of perspectives – provide transparency.
- Identify missions, programs and investments to which the PR&G apply.
- Revise Corps' planning process to develop broader solutions.
 - Takes a broader look at benefits in plan formulation (especially for General Investigations projects)
 - More innovative process and solutions, better serving Environmental Justice communities and more amenable to local sponsors priorities
 - Elevating the nonstructural alternative where appropriate in the final array
 - Allows the Corps to be more sensitive, incorporating other factors and features
- Align Corps' planning process with other federal agencies' ASP's.

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PR&G - Objectives for ASP's (p2)

- Improve communication of tradeoffs among plans and outputs and monetized and non-monetized effects, as well as communication of any uncertainties.
- Move from a computationally-driven “best” decision to investment advice.
- Recognizing limited fiscal resources, potentially resulting in solving a water resources problem at a smaller or different scale.
- Connect this broader look at benefits with the real impacts of decision making.
- Institutionalize a new way of Corps planning and decision making.



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PR&G - Desired Public Input

- As we modify the Corps' planning process, what should definitely stay, what should definitely change?
- Which Corps missions, programs and investments should apply the PR&G?
- How broad should the scope be (in terms of area, purpose, uncertainty, level of detail, engagement, systems approach) considering limited time and budget?
- How should the planning process address uncertainties?

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PR&G - Desired Public Input



- How should the Corps “equally” consider total benefits?
- How should the Corps approach tradeoffs among objectives measured in monetary, non-monetary and non-quantitative terms?
- Are there other agency ASP’s we should model?
- What must happen outside of ASP development for this revision to be effective?
- Who else do we need to talk to for outreach to make this effective?

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Environmental Justice Policy

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Environmental Justice – Interim Guidance Policy

- On March 15, 2022, the ASA(CW) issued a memorandum to the Corps providing interim guidance on environmental justice titled, *Implementation of Environmental Justice and the Justice40 Initiative*.
- Policy Statement: Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income regarding the development, implementation and enforcement of environmental laws, regulations, and policies, with no group bearing a disproportionate burden of environmental harms and risks.



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Environmental Justice – Interim Guidance Policies



- Considered throughout the Civil Works programs.
- Work to reduce disparate environmental burdens, remove barriers to participation in decision-making, and increase access to benefits provided by Civil Works programs.
- Work to accommodate and encourage participation of all communities as partners in the assessments of need, studies, planning development, and implementation.
- Work collaboratively with other federal, state and local governments, Tribes, and communities.



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Environmental Justice Interim Guidance

Three Key Areas of Focus



- 1) Improving outreach and access to Army Civil Works information and resources;
- 2) Improving access to Civil Works technical service programs (e.g., Planning Assistance to States and Floodplain Management Services programs) and maximizing the reach of Civil Works projects to benefit the disadvantaged and underserved communities, in particular as it relates to climate resiliency; and
- 3) Ensuring any updates to Army Civil Works policies and guidance will not result in a disproportionate impact on disadvantaged and underserved communities.

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Environmental Justice – Corps' Implementation of the Justice40 Initiative

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- Whole-of-government effort to deliver at least 40 percent of the overall benefits from Federal investments to disadvantaged communities.
- The Corps intends to use overall investments as the metric to measure benefits:
 - 40% of Corps investments in the climate and critical clean water and wastewater infrastructure categories, as described in the OMB implementing memo M-21-28 and identified in the CEQ Climate and Economic Justice Screening Tool, must benefit disadvantaged communities.

40% of



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Environmental Justice Priority Action Areas



- Investigations and Construction for flood risk management, coastal storm risk management, and aquatic ecosystem restoration
- Tribal Partnership Program
- Planning Assistance to States program
- Floodplain Management Services program
- Continuing Authorities Program
- Environmental infrastructure

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Environmental Justice Interim Policy Tribal Partnership Program

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- For the Tribal Partnership Program, 100% of investment benefits goes towards Tribal Nations.
- As described in one of the other focal areas of the Modernize Civil Works FRN, the Army is working to develop comprehensive program guidance to ensure this Program reaches its maximum potential.

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Environmental Justice Interim Policy Planning Assistance to States and Floodplain Management Services



- Although work conducted under these programs is done upon request of the partner, there are still opportunities where the Corps can direct portions of the overall investments for each of the programs towards benefitting disadvantaged and underserved communities.
- The Corps is developing an investment strategy to target benefits in these Programs to disadvantaged and underserved communities.
- The strategy will include identification of outreach methods to be performed at the district level to ensure communities are engaged to broaden awareness of the opportunities and services these Programs can provide.



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Environmental Justice Interim Policy Investigations and Construction



- Investigation and Studies and Planning.
- More proactive approach towards achieving environmental justice.
- May take time to achieve for full potential.
- Underserved and disadvantaged communities play key role in the effort to advance their needs.
- Goes beyond “doing no harm”, putting underserved communities at the front and center of studies.
- Initiate outreach and engage communities early in the process which will be used to help scope the study.
- Construction.
- For projects which already have been authorized, the Corps will continue to invest in projects which benefit disadvantaged and underserved communities.

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Environmental Justice Interim Policy Significant but Incidental Benefits



- There are also significant but incidental benefits which the Corps should ensure are accounted for in describing a project.
- These are things which are also highlighted as important to the Administration, such as recreational access for disadvantaged communities, water quality improvements, and carbon sequestration.
- These may not be the driving force for assessing benefits under Corps authorities and mission areas but they are significant nonetheless and the Corps will ensure greater awareness is provided regarding these benefits.

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Environmental Justice Interim Policy Outreach and Engagement



- Must be an evolution as to how the Corps engages and builds relationships with communities.
- National-level engagement.
- There will be a targeted focus at the local level.
- The Corps is working to develop an outreach and strategic plan capitalizing on a broad range of community-level opportunities to truly listen to their needs.
- Strive to align Corps' missions and authorities with the communities' vision of the future to address the communities' needs and enable community resilience to the maximum extent practicable.



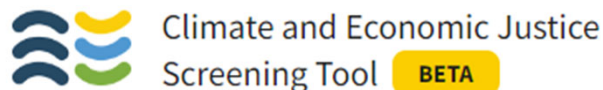


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Environmental Justice Policy - Tools

- CEQ released a beta version of the Climate and Economic Justice Screening Tool (CEJST) to provide a consistent government-wide identification of disadvantaged communities that are marginalized, underserved, and overburdened by pollution.
- The Army will use the CEJST for purposes of implementing environmental justice, in particular as it pertains to the Justice40 Initiative.
- Use of additional tools is encouraged, such as the Environmental Protection Agency's EJScreen tool, to provide further support and description of these communities for purposes such as compliance with the National Environmental Compliance Act compliance; and outreach to underserved communities for technical services programs.



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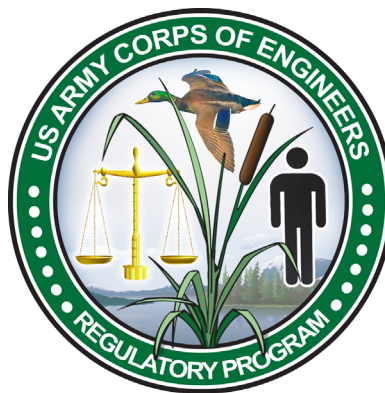


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Environmental Justice Policy – Seeking Input



- One area not addressed in the Interim Guidance is the Corps' Regulatory Program.
- The Army intends to issue guidance specific to the Regulatory Program and seeks input on how best to incorporate consideration of environmental justice in the Program.
- The Army requests recommendations as to how to accomplish such incorporation.



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Environmental Justice Policy - Seeking Input

- Are there additional measures Army should include related to environmental justice, as well as specific to the Justice40 Initiative, in a final environmental justice policy?
- Are there specific areas to be updated in the Interim Guidance for consideration?
- Are there specific considerations regarding the Corps' technical services programs which could better achieve environmental justice and equity?
- Input is requested on ways to improve how these Corps programs advance environmental justice and equity, and on any current barriers to achieving these objectives.

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Environmental Justice Policy - Seeking Input

- The Army seeks input on what forms of outreach are best to engage disadvantaged and underserved communities.
- In addition, how can the Corps best leverage the capabilities and authorities of other partners and federal agencies to meet the needs of disadvantaged and underserved communities?
- The Army also seeks input on recommendations regarding the assessment of benefits directed towards those communities specific to the Civil Works program.

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Section 160 of Water Resources Development Act (WRDA) of 2020

Definition of “Economically Disadvantaged Community”

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WRDA 2020 Section 160 – Provision Language Definition of “Economically Disadvantaged Community”

(a) IN GENERAL. Not later than 180 days after the date of enactment of this Act, the Secretary shall issue guidance defining the term “economically disadvantaged community” for the purposes of this Act and the amendments made by this Act.

(b) CONSIDERATIONS. In defining the term “economically disadvantaged community” under subsection (a), the Secretary shall, to the maximum extent practicable, utilize the criteria under paragraph (1) or (2) of section 301(a) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161), to the extent that such criteria are applicable in relation to the development of water resources development projects.

(c) PUBLIC COMMENT. In developing the guidance under subsection (a), the Secretary shall provide notice and an opportunity for public comment.

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WRDA 2020 Section 160 – Application Definition of “Economically Disadvantaged Community”



Why is this definition needed?

- Three programs were authorized under WRDA 2020 which requires the non-Federal interest to meet the criteria of the definition to be eligible for participation:
 - Section 117 Federal Interest Determination
 - Section 118 Pilot programs on the formulation of Corps of Engineers projects in rural communities and economically disadvantaged communities
 - Section 165 Continuing Authorities Program

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WRDA 2020 Section 160 – Proposed Definition Definition of “Economically Disadvantaged Community”

PROPOSED Definition:

- a. Economically Disadvantaged Community. For purposes of the Army Civil Works program an economically disadvantaged community is defined as meeting one or more of the following:
 - (1) Low per capita income - The area has a per capita income of 80 percent or less of the national average.
 - (2) Unemployment rate above national average - The area has an unemployment rate that is, for the most recent 24-month period for which data are available, at least 1 percent greater than the national average unemployment rate.
 - (3) Indian country as defined in 18 U.S.C. 1151.
 - (4) U.S. Territories.

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WRDA 2020 Section 160 – Seeking Input Definition of “Economically Disadvantaged Community”

- How do you define community?
- Does the proposed definition capture the intent of the statute?
- Does the proposed definition characterize the overall general sense of what you would consider applicable when you think about an “economically disadvantaged community”?
- Are there categories of communities that you believe are not represented or under-represented in this proposed definition?



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Outreach and Written Docket



Policy Initiative	Public	Tribal
Tribal Issues (Tribal Consultation Policy and Tribal Partnership Program)	July 11, 2022, from 1 - 3 p.m. Eastern	July 7, 2022, from 1 - 3 p.m. Eastern; July 12, 2022, from 2 - 4 p.m. Eastern
Appendix C	July 14, 2022, from 2 - 4 p.m. Eastern	July 19, 2022, from 2 - 4 p.m. Eastern
PR&G	July 18, 2022, from 1 - 3 p.m. Eastern	July 21, 2022, from 1 - 3 p.m. Eastern
Environmental Justice (including WRDA Section 160 definition of “economically disadvantaged community”)	July 20, 2022, from 1 - 3 p.m. Eastern; July 26, 2022, from 2 - 4 p.m. Eastern	July 27, 2022, from 1 - 3 p.m. Eastern

Written Docket: <https://www.regulations.gov/> at Docket ID No. COE-2022-0006

60-day comment period concludes on August 2, 2022.

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This meeting has ended

Thank you for listening!

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