

# Some consultation basics

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## Some Basics – Consultation and Consulting Parties

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- ▶ **Consultation:** “the process of seeking, discussing and considering the views of other participants, and where possible, seeking agreement with them regarding matters arising in the §106 process.”
- ▶ **Participants:** agency official (DOE), Council, (Advisory Council on Historic Preservation), consulting parties

# Who Can Be Consulting Parties?

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- ▶ **Consulting parties** with consultative roles:
  - ▶ State historic preservation officer (SHPO)
  - ▶ Indian tribes and Native Hawaiian organizations
  - ▶ Representatives of local governments
  - ▶ Applicants for federal assistance, permits, licenses and other approvals
  - ▶ Additional consulting parties, and
  - ▶ The public – The views of the public are essential to informed Federal decision-making... the agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects to historic properties...

# More On Public Involvement

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- ▶ Consulting parties and the public are involved at many junctures throughout the review of an agency action :
  - ▶ When the agency provides notice and information about a project
  - ▶ When an undertaking is established
  - ▶ In the identification of historic properties
  - ▶ In the assessment of adverse effects
  - ▶ In the resolution of adverse effects
- ▶ Note, too, that members of the public and consulting parties may also provide views on their own initiative for the agency official to consider in decision-making

# PORTS Projects and CERCLA

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- ▶ The decontamination and demolition project (“D&D”) and the waste disposition project at PORTS are being conducted under CERCLA – Comprehensive Environmental Response, Compensation and Liability Act
- ▶ CERCLA is a law that streamlines the regulatory review process
- ▶ Streamlined reviews enable risks and hazards to human health and the environment to be cleaned-up in an expedited manner

# The ARARs Process and § 106 of the National Historic Preservation Act

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- ▶ The CERCLA ARARs (applicable or relevant and appropriate requirements) method means that the **§106 process is carried out differently** than the standard § 106 process
- ▶ DOE works with its consulting parties and interested citizens ***throughout the CERCLA process***
- ▶ **The elements of § 106 are the same** – identification of an undertaking (a project), identification of historic properties, assessment of adverse effects, analysis of alternatives, resolution of adverse effects by avoidance, minimization, and/or mitigation – but they are carried out within the CERCLA process, instead of separately

# The ARARs process and § 106 of the National Historic Preservation Act (continued)

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- ▶ **Measures** needed to avoid, minimize or mitigate impacts to historic properties are identified in the CERCLA documents, and
- ▶ **Commitments** DOE makes to take these avoidance, minimization or mitigation actions are included in the decision documents and are binding on the Department

# CERCLA Document “Reader’s Guide” for National Historic Preservation Act Reviews at the PORTS Site

A guide on where to find NHPA review information  
in standard CERCLA documents

# What's different in a CERCLA review?

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## 1. Why are things different from a usual §106 review?

- ▶ The DOE decision-making about the process buildings, other buildings and structures, and waste disposition are being conducted under CERCLA at PORTS. CERCLA actions use a different method to conduct reviews required by other laws, such as NHPA.

## 2. Do my comments count?

- ▶ Yes. DOE will seek input from the public, including consulting parties, during the CERCLA review process. Your comments will be reviewed, documented in the Administrative Record, and considered prior to agency decision-making.

# What's different in a CERCLA review?

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## 3. Will I see specific responses to my comments?

- ▶ DOE will prepare a responsiveness summary of all of the comments received. Your comments may be addressed individually or as a part of a consolidated group of comments. In some instances you will see direct changes in documents that reflect your input.

## 4. Do cultural resources get the same protection under CERCLA reviews?

- ▶ Yes. Even though the review process is different from the standard §106 process, it provides for public review and comment and consideration of comments.



# Where do I find what I'm used to seeing under §106 in a CERCLA document?

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<b>§ 106 element</b>	<b>CERCLA document</b>
800.3 initiation of the §106 process	▶ The overall document, Appendix B, Section B.3.3 “cultural resources” & Section 1.3 “community participation”
800.4 identification of historic properties	▶ Appendix B, Section B.3.3, which also uses and references all PORTS’ archaeological and architectural surveys
800.5 assessment of adverse effects	▶ Appendix B, Section 3.3. ▶ Consultation occurs as a part of the overall CERCLA process including document reviews

# Where do I find what I'm used to seeing under §106 in a CERCLA document?

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<b>§ 106 element</b>	<b>CERCLA document</b>
800.6 resolution of adverse effects	<ul style="list-style-type: none"><li>▶ Consultation occurs as a part of the overall process including community involvement, document reviews, public meetings, comment consideration, and comment resolution</li><li>▶ Comments become part of the Administrative Record (AR).</li><li>▶ Comments are addressed in a responsiveness summary which is also a part of the AR.</li><li>▶ If there are historic properties identified and they will be adversely affected by the proposed agency action, mitigation measures will be developed. They are found in Appendix B, Section B.3.3.</li><li>▶ The final signatures on a decision document make all mitigation measures binding on the agency and in the case of PORTS, on OEPA as well.</li></ul>

