

ACHP Comments – Pebble Project Preliminary Draft EIS, Section 3.8 – Historic Properties

Agency	Comment No.	Section, Paragraph, and Page #	Cooperating Agency Comment (and Purpose of Comment)	Proposed Resolution (Additions or Deletion of Text)	Response
ACHP	1	3.8 Introduction	Under 36 CFR 800, there are different definitions in Appendix C for historic properties and the geographic area where identification, evaluation, and effects assessments are needed. Also under 36 CFR 800,	The Area of Potential Effects (APE) is defined in 36 CFR 800. Appendix C focuses on Permit Area, but provides for expansion of the Permit Area to include the upland portions of an undertaking when appropriate. ACHP will work with the Corps, SHPO, and others to develop an appropriate and reasonable APE for direct and indirect effects from the undertaking. ACHP understands that federal agencies, at times, can argue they have a “Small Federal Handle” which may circumscribe the extent to which they are responsible for ‘taking into account’ effects to historic properties from undertakings for which they have a federal action. However, in this case, we don’t believe such an argument can be made. Further, consultation cannot be redefined. Note that ACHP has never approved Appendix C as an alternative to 36CFR800, as is required by both the Statute itself and the Section 106 implementing regulations. We can reference both 36 CFR 800 and Appendix C throughout the EIS and Section 106 documents but not in a way that suggests that Appendix C takes precedence over 36 CFR 800. The NEPA and Section 106 documents for this undertaking should not be the place where this disagreement is carried out. ACHP looks forward to resolving these issues with the Corps in the proper venue.	Comment acknowledged. The USACE looks forward to resolving these issues with ACHP and the SHPO. The referenced statement has been deleted.
ACHP	2	3.8 Introduction	The scope of the identification effort, determinations of eligibility and effect, and steps to resolve adverse effects must be informed by the traditional knowledge of Tribes who ascribe value to such properties.	I suggest we can reference the definitions of permit area and APE here and indicate that the Corps consulting with SHPO and consulting parties to clarify permit area and APE for this undertaking.	Reference added to the APE/Permit Area discussion.
ACHP	3	3.8 Introduction	Appendix C does not involve the	And, thus is deficient in terms of compliance	Statement has been

ACHP Comments – Pebble Project Preliminary Draft EIS, Section 3.8 – Historic Properties

Agency	Comment No.	Section, Paragraph, and Page #	Cooperating Agency Comment (and Purpose of Comment)	Proposed Resolution (Additions or Deletion of Text)	Response
			same consultation process as 36 CFR 800 outlines. 33 CFR 325(8) states that, “at any time, the district engineer may consult with the involved parties to discuss and consider possible alternatives or measures to avoid or minimize the adverse effects of the proposed activity.”	with the requirements of Section 106 of NHPA.	deleted and information added on the days of consulting party meetings.
ACHP	4	3.8.2 Permit Area	3.8.2 Permit Area	Add discussion of APE as well, or limit this as suggested in next comment.	Discussion of APE was added.
ACHP	5	3.8.2 Permit Area	Appendix C defines the term “permit area” as the geographic extent of the USACE’s responsibility for considering effects on historic properties, which varies from the Area of Potential Effect as defined by 36 CFR 800.16(d).	Not necessarily. Permit area can be expanded to reflect an appropriate APE as defined under the Section 106 implementing regulations. I suggest we just reference that the Permit Area and resultant APE have yet to be fully determined at this time, but will be under the Section 106 consultation.	Section has been edited per this comment.
ACHP	6		<ul style="list-style-type: none"> Such activity would not occur but for the authorization of the work or structures in the waters of the US; Such activity must be integrally related to the work or structures to be authorized in waters of the US. Or, conversely, the work or structures to be authorized must be essential to the completeness of the overall project or program; and Such activity must be directly associated (first 	One of the main problems with these criteria is that there are interpreted inconsistently from case to case and from district to district, so as to have almost no meaning beyond being referenced to justify the Corps’ minimization of its responsibilities in any particular case. I strongly suggest that we leave these out and just reference that Corps will clarify/finalize delineation of the permit area and associated APE during consultation for compliance with Section 106.	These bullets have been deleted. Text changed to note that the APE will be finalized during the NHPA Section 106 consultation process.

ACHP Comments – Pebble Project Preliminary Draft EIS, Section 3.8 – Historic Properties

Agency	Comment No.	Section, Paragraph, and Page #	Cooperating Agency Comment (and Purpose of Comment)	Proposed Resolution (Additions or Deletion of Text)	Response
			order impact) with the work or structures to be authorized.		