The SCA Native American Programs Committee
Janet P. Eidsness, Chairperson

PRESENTS A

SOURCEBOOK

ON

CULTURAL RESOURCES MANAGEMENT, ARCHAEOLOGY, AND CULTURAL HERITAGE VALUES

FOR THE

NATIVE AMERICAN COMMUNITIES OF CALIFORNIA

October 2005
Fifth Edition
# TABLE OF CONTENTS

MISSION STATEMENT, SCA Native American Programs Committee ........................................ x
MESSAGE from the President of the Society for California Archaeology (SCA) and Chair of the SCA Native American Programs Committee ........................................ xi

## PART 1: KEY LAWS ADDRESSING NATIVE AMERICAN CULTURAL RESOURCES

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-0 Preface to Part I</td>
<td>1</td>
</tr>
<tr>
<td>1-1 An Introduction to Cultural Resources Management (NAHC website)</td>
<td>3</td>
</tr>
<tr>
<td>1-2 Scenarios: Which Law Applies?</td>
<td>11</td>
</tr>
</tbody>
</table>

### FEDERAL LAWS, REGULATIONS AND POLICIES

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-3 Summary of Key Federal Cultural Resources Protection Laws (NAHC website)</td>
<td>13</td>
</tr>
</tbody>
</table>

#### CONSIDERING EFFECTS OF PROPOSED FEDERAL UNDERTAKINGS ON CULTURAL RESOURCES

#### KEY LAW

1-4 National Historic Preservation Act of 1966 as Amended through 2000 (see Sec. 106) ..... 15

#### KEY REGULATIONS

1-5 36 CFR 800, Protection of Historic Properties, Incorporating Amendments Effective August 5, 2004 (“Section 106 Process”) .......................................................... 63


#### FEDERAL CRITERIA FOR EVALUATING SITE SIGNIFICANCE

1-7 National Register Bulletin: How to Apply the National Register Criteria for Evaluation ................................................................. 93

1-8 National Register Bulletin: Guidelines for Identifying and Evaluating Traditional Cultural Properties (TCPs) (Parker and King, revised 1998) ................................................................. 173

#### SECTION 106 CONSULTATION WITH TRIBES

1-9 Consulting With Indian Tribes in the Section 106 Review Process (ACHP website) .. 219
Section 1-10 Advisory Council on Historic Preservation (ACHP) Policy Statement Regarding ACHP's Relationships With Indian Tribes (ACHP website) .......................................................... 229

RELATED LAW ADDRESSING INDIAN SACRED SITES
1-11 Executive Order 13007, Indian Sacred Sites (Clinton 1996) ........................................ 235

1-12 The Relationship Between Executive Order 13007 Regarding Indian Sacred Sites and Section 106 (ACHP website) ............................................................................................... 237

κ CONSIDERING EFFECTS OF FEDERAL ACTIONS ON THE "HUMAN ENVIRONMENT"

KEY LAW
1-13 National Environmental Policy Act (NEPA) of 1969, As Amended Through 1982 .... 239

REGULATIONS
1-14 CEQ—Regulations for Implementing NEPA (Council on Environmental Quality [CEQ] website) ........................................................................................................... 247

GUIDANCE
1-15 NEPA For Historic Preservationists and Cultural Resource Managers (National Preservation Institute [NPI] website) ........................................................................... 283

RELATED LAW
1-16 Executive Order 12898, Federal Actions to Address “Environmental Justice” in Minority Populations and Low-Income Populations (Clinton 1994) ................. 313

κ PERMITS AND PENALTIES FOR DAMAGING CULTURAL RESOURCES ON FEDERAL LANDS

KEY LAW
1-17 Archaeological Resources Protection Act (ARPA) of 1979, As Amended .................. 319

REGULATIONS
1-18 43 CFR 7, Regulations for ARPA, As Revised through October 1, 1997 ................. 333

κ FEDERAL GRAVES PROTECTION AND REPATRIATION

KEY LAW
1-19 Native American Graves Protection and Repatriation Act (Federal NAGPRA) of 1990, as Amended ................................................................. 353

SOURCEBOOK Table of Contents (5th Edition 2005)
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>KEY REGULATIONS</td>
<td></td>
</tr>
<tr>
<td>1-20 43 CFR 10, NAGPRA Final Rule</td>
<td>371</td>
</tr>
<tr>
<td>CALIFORNIA STATE LAWS, REGULATIONS AND GUIDELINES</td>
<td></td>
</tr>
<tr>
<td>1-21 Key State Historic Preservation Laws: Summary and Quick Reference Guide</td>
<td>401</td>
</tr>
<tr>
<td>• CONSIDERING IMPACTS OF PROPOSED PRIVATE AND LOCAL GOVERNMENT PROJECTS ON CULTURAL RESOURCES</td>
<td></td>
</tr>
<tr>
<td>KEY LAW AND GUIDELINES</td>
<td></td>
</tr>
<tr>
<td>1-22 California Environmental Quality Act (CEQA) and Historical Resources (Office of Historic Preservation [OHP] Technical Assistance Series 1)</td>
<td>407</td>
</tr>
<tr>
<td>• NATIVE AMERICAN GRAVES PROTECTION ON PRIVATE, CITY AND STATE LANDS</td>
<td></td>
</tr>
<tr>
<td>1-23 Native American Graves Protection: A Resource Guide for Coroners, Native American Most Likely Descendants, Tribal Governments, Tribal Organizations, Archaeologists, Law Enforcement Officials, City and County Planners, Property Owners, and Developers (NAHC website)</td>
<td>467</td>
</tr>
<tr>
<td>1-24 Public Resources Code, Section 5097.9: Establishes Native American Heritage Commission, Establishes Notification Procedures When Native American Remains Found, Prohibits Possession of Native American Remains or Grave Goods, Addresses Native American Graves, Cemeteries, Religious or Ceremonial Sites or Shrines, etc. (CDF 1999 Compilation)</td>
<td>471</td>
</tr>
<tr>
<td>• CALIFORNIA REPATRIATION LAW</td>
<td></td>
</tr>
<tr>
<td>KEY LAW:</td>
<td></td>
</tr>
<tr>
<td>1-25 California Assembly Bill 978 (Steinberg 2001), Native American Graves Protection and Repatriation Act (“California NAGPRA”)</td>
<td>475</td>
</tr>
<tr>
<td>• “SENATE BILL 18,” NATIVE AMERICAN CONSULTATION IN LONG-RANGE LAND-USE PLANNING BY LOCAL GOVERNMENTS</td>
<td></td>
</tr>
<tr>
<td>KEY LAW:</td>
<td></td>
</tr>
<tr>
<td>1-26 California Senate Bill 18 (Burton 2004), Traditional Tribal Cultural Places</td>
<td>489</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
</tr>
<tr>
<td>---------</td>
<td>------</td>
</tr>
<tr>
<td><strong>KEY GUIDELINES:</strong></td>
<td></td>
</tr>
<tr>
<td>1-27 Tribal Consultation Guidelines (for SB 18), Supplement to General Plan Guidelines (Governor’s Office of Planning and Research [OPR], Final 4/15/05)</td>
<td>497</td>
</tr>
<tr>
<td><strong>ABOUT CONSERVATION EASEMENTS:</strong></td>
<td></td>
</tr>
<tr>
<td>1-28 Fact Sheet: The Steps in Granting a Conservation Easement (Northern California Land Trust)</td>
<td>541</td>
</tr>
<tr>
<td>1-29 Model Conservation Easement, What Each of the Parts Mean (Northern California Land Trust)</td>
<td>547</td>
</tr>
<tr>
<td>1-30 Sample Draft Deed of Cultural Conservation Easement (Cultural Conservancy)</td>
<td>551</td>
</tr>
<tr>
<td>1-31 Model Language for Title Restrictions to Use in Transfer of Historic Properties--Model Archaeological Restrictions and Traditional Cultural Property Restrictions (NPI website)</td>
<td>563</td>
</tr>
<tr>
<td>1-32 Tribal Lands Program: Conserving Land for American Indians (Trust for Public Land)</td>
<td>567</td>
</tr>
<tr>
<td>1-33 Fact Sheet: Potential Tax Savings (Northern California Land Trust)</td>
<td>569</td>
</tr>
<tr>
<td><strong>STATE PENALTIES FOR MALICIOUS AND INTENTIONAL DESTRUCTION, LOOTING AND OTHER DAMAGE TO SITES</strong></td>
<td></td>
</tr>
<tr>
<td><strong>KEY LAW:</strong></td>
<td></td>
</tr>
<tr>
<td>1-34 California Senate Bill 1816 (Chesbro 2002), Native American Historic Resource Preservation Act</td>
<td>571</td>
</tr>
<tr>
<td><strong>NATIVE AMERICAN CONSULTATION GUIDANCE</strong></td>
<td></td>
</tr>
<tr>
<td>1-35 Executive Order 13175: Consultation and Coordination With Indian Tribal Governments (Clinton 2000)</td>
<td>577</td>
</tr>
<tr>
<td>1-36 BLM Handbook H-8120-1 Guidelines for Conducting Tribal Consultation</td>
<td>581</td>
</tr>
<tr>
<td>1-38 Native American Heritage Commission’s Consultation Guidelines (7/705)</td>
<td>695</td>
</tr>
<tr>
<td>(Also see Item 1-27 for SB-18 Consultation, Item 3-6 for CDF Consultation)</td>
<td></td>
</tr>
</tbody>
</table>
# PART 2: NATIVE AMERICAN MONITORS, TRAINING AND PROFESSIONAL OPPORTUNITIES

## Preface to Part 2

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>2-0</td>
<td>701</td>
</tr>
</tbody>
</table>

### SELECTION, ROLES AND RESPONSIBILITIES OF NATIVE AMERICAN MONITORS

<table>
<thead>
<tr>
<th>2-1</th>
<th>Native American Heritage Commission (NAHC) Guidelines for Native American Monitors/Consultants (approved September 13, 2005)</th>
<th>703</th>
</tr>
</thead>
<tbody>
<tr>
<td>2-2</td>
<td>Guidelines for Native American Monitors (Goode 1992)</td>
<td>707</td>
</tr>
<tr>
<td>2-3</td>
<td>Caltrans' Guidance for Native American Monitors (Caltrans website)</td>
<td>709</td>
</tr>
<tr>
<td>2-4</td>
<td>Native American Program Monitor &amp; Coordinator Field Guidance, Nellis Air Force Base</td>
<td>711</td>
</tr>
<tr>
<td>2-5</td>
<td>Example Position Description: Native American Monitors (Eidsness 2001)</td>
<td>717</td>
</tr>
<tr>
<td>2-6</td>
<td>Basic Field Equipment List (Eidsness 2002)</td>
<td>721</td>
</tr>
</tbody>
</table>

(see also Item 2-11 job description example)

### RECORDKEEPING BY MONITORS

| 2-7     | Example Format: Daily Native American Monitor Record (Eidsness 2001)                                                     | 723 |
| 2-9     | Example Format: Archaeological Site Management Data                                                                      | 727 |
| 2-10    | Archaeological Site Condition Assessment Record (Department of Parks and Recreation form DPR ASCAR 11/29/00)               | 731 |

(see also Item 2-11 example format)
EXAMPLES OF NATIVE AMERICAN MONITOR TRAINING

2-11 Example Training Manual: Native American Monitor Training Program for the Level 3 Communications Fiber Optic Project in California ........................................................ 735

2-12 Example Workshop Curriculum: Nor Rel Muk Nation’s Cultural Resources Monitor Training Workshop ......................................................................................................................803

2-13 Example Workshop Curriculum: Mechoopda Indian Tribe of Chico Rancheria’s Cultural Resources Workshop ........................................................................................................805

2-14 Published Articles on Nor Rel Muk and Mechoopda Workshops (Society for California Archaeology Newsletter 39(1)) ..........................................................................................807

EDUCATIONAL OPPORTUNITIES FOR MONITORS AND CAREERS IN CULTURAL RESOURCES MANAGEMENT

2-15 Frequently Asked Questions About a Career in Archaeology in the U.S. (Carlson, revised 2002) ..........................................................................................................................813

2-16 Example of California Community College Curriculum: Cabrillo College Archaeological Technology Program (from website) ..................................................................................829

2-17 Example of California State University Curriculum: Sonoma State University Anthropology Department M.A. Program in Cultural Resources Management, and the Anthropological Studies Center (website) ..................................................................................835

2-18 Training Offered by National Preservation Institute (NPI) (NPI website) ............. 839

2-19 Information on CDF Archaeological Surveyor Training Program (CDF website) ....... 843
# PART 3: WHO YOU GOING TO CALL?
## OFFICIAL STATE AND NATIONAL CONTACTS

**Section** | **Page**
--- | ---
3-0 *Preface to Part 3* | 845

## IN CALIFORNIA:

### State Commissions, Agencies and Departments:

3-1 About the... Native American Heritage Commission (NAHC): Contacts and Strategic Plan (NAHC website) | 847

3-2 About the... California Office of Historic Preservation (OHP): Contacts, Mission, Responsibilities (OHP website) | 857

3-3 About the... State Historical Resources Commission: Commissioners, Responsibilities (OHP website) | 861

3-4 About the... Information Centers (IC) of the California Historic Resources Information System (CHRIS): Responsibilities, Contacts (OHP website) | 863

3-5 California Repatriation Oversight Commission (ROC) | 867


3-7 California Department of Parks and Recreation (DPR): Contacts, Cultural Resources Management Program, California Indian Heritage Museum and Task Force (DPR website) | 883

3-8 California Department of Transportation (Caltrans): Cultural Resources and Native American Programs and Contacts (Caltrans website) | 891

### Contacts for Federal Agencies in California:

3-9 USDI Bureau of Land Management (BLM) Tribal Programs Contact List, California Offices | 901

3-10 USDA Forest Service (USFS) Tribal Relations Program Managers/Partners in California | 903

3-11 USDI National Park Service (NPS) Cultural Resources Staff Contacts-California | 905
### AT NATIONAL LEVEL:

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3-12</td>
<td>907</td>
</tr>
<tr>
<td>3-13</td>
<td>915</td>
</tr>
<tr>
<td>3-14</td>
<td>917</td>
</tr>
<tr>
<td>3-15</td>
<td>923</td>
</tr>
<tr>
<td>3-16</td>
<td>925</td>
</tr>
</tbody>
</table>

- 3-12 About the... Advisory Council on Historic Preservation (ACHP)
- 3-13 About the... NPS American Indian Liaison Office
- 3-14 About the... National NAGPRA Program
- 3-15 About the... NPS Tribal Preservation Program
- 3-16 About the... National Organization of Tribal Historic Preservation Officers (NATHPO) Including California THPOs
# PART 4: OTHER USEFUL INFORMATION

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4-0 Preface to Part 4</td>
<td>929</td>
</tr>
<tr>
<td>4-1 About the Society for California Archaeology (SCA): Mission, Code of Ethical Guidelines, Executive Board, Committees and Liaisons, California Indian Heritage Preservation Award, Annual Meeting 2006, California Indian Scholarship Program, Membership</td>
<td>931</td>
</tr>
<tr>
<td>4-2 About the Register of Professional Archaeologists (RPA): Contact and RPA Search Information, Code of Conduct and Standards of Research Performance</td>
<td>947</td>
</tr>
<tr>
<td>4-3 About The Archaeological Conservancy</td>
<td>953</td>
</tr>
<tr>
<td>4-4 Useful Websites</td>
<td>955</td>
</tr>
<tr>
<td>4-5 Glossary: Common Acronyms and Terms Used in Cultural Resources Management (CRM)</td>
<td>965</td>
</tr>
</tbody>
</table>
MISSION STATEMENT

The mission of the Society of California Archaeology (SCA) Native American Programs Committee is to promote communication and exchange of information among California Indians and cultural resource management (CRM) professionals. The Native community and SCA will accomplish this mission through collaborative efforts in education and technical assistance.
September 2005

Subject: Revised 5th Edition of the Sourcebook

This revised and updated Sourcebook on Cultural Resources Management, Archaeology, and Cultural Heritage Values has been compiled by the Native American Programs Committee (NAPC) of the Society for California Archaeology (SCA) for California Indian communities and others who share the common goal of promoting the preservation of our State's heritage resources. The revisions include the provisions of Senate Bill 18/Sacred Sites Bill, among other changes or additions to regulations. Today, with cultural resources threatened by urban growth and increasing population, it has become even more important for cultural resource practitioners and California Indians to work together in preservation efforts.

The SCA is committed to reaching out and working with those who request our assistance in promoting the preservation and understanding of archaeological and other cultural values represented by our state's unique, non-renewable heritage places. We encourage and provide training to create greater awareness and understanding of preservation law to assist in these goals. The SCA Native American Programs Committee welcomes new members to broaden our network, and suggestions about how we may best serve California Indian communities in preserving and promoting their cultural heritage.

We hope you find the Sourcebook useful. Any questions or comments, or requests for additional Sourcebook copies should be directed to Janet Eidsness at P.O. Box 1442, Willow Creek, California 95573, telephone (530) 629-3153, fax (530) 629-2854, email jpeidsness@yahoo.com.

Sincerely,

Shelly Davis-King, President
Society for California Archaeology

Janet P. Eidsness, Chairperson
SCA Native American Programs Committee
PART 1:

KEY LAWS ADDRESSING
NATIVE MARICAN CULTURAL RESOURCES
PREFACE TO PART 1

Knowing the law is essential. To be most effective in protecting those heritage resources important to you, knowing which law applies (and related regulations or guidelines) is important when speaking with planners, developers, agency officials, property owners, archaeologists, and others. Part 1 identifies the key Federal and State laws commonly referred to as “historic preservation laws.” The Introduction to CRM (Item I-1) defines what types of cultural resources are addressed by these laws (sites, buildings, structures, objects, districts, landscapes, traditional cultural properties). It summarizes the steps commonly used to figure out if cultural resources are present on a given piece of property, evaluate their significance, assess potential project impacts, and develop an appropriate management plan. Opportunities and the mandates for Native American consultation and input are built into all these steps, and have become increasingly important under the law.

Determine which law applies. The most important first step is to determine if the proposed development or action is covered by State law, Federal law, or some combination. If a proposed development (subdivision, power plant, highway) or activity (mining, logging) threatens to impact a cultural resource, first ask the question: “Is there Federal involvement?” (funding? permitting? Is a Federal agency such as the US Forest Service or US Bureau of Reclamation initiating the project?) If the answer is YES, then it is likely that Section 106 of the National Historic Preservation Act applies (Items I-4 through I-9). NEPA, the National Environmental Quality Act also may apply where there is Federal involvement, and the Section 106 and NEPA reviews will be coordinated (Items I-13 through I-16). If the answer is NO, then CEQA, the California Environmental Quality Act (Item I-22) probably applies.

Identify the impact evaluation process. Each project starts with some internal planning, then moves to hearings, studies, approval, permits, and activity. Different agencies and offices within the agencies, will be engaged at different stages. Section 106, NEPA and CEQA establish “processes” for the lead Government agency, with public input and oversight, to make informed decisions about what can be done to avoid, minimize or mitigate expected impacts from a proposed project or undertaking on significant cultural resources.

Added to this edition are the revised regulations (36 CFR 800) for Section 106 (Item 1-5), which respond to amendments of the National Historic Preservation Act. Note that the Act and especially Section 106 have and continue to be “under attack” by interest groups that want reduce the level of protection afforded to significant cultural resources on public (and private) lands.

Only significant cultural resources matter under these environmental reviews; if the resource does not meet the legal criteria for “significance,” then it is not considered. Significance criteria are essentially the same under the Federal and State laws (Items 1-7, 1-8 and 1-22). Just because a cultural resource is determined eligible for or listed on the official National or State registers does not guarantee that it will be preserved forever—however, under Section 106 and CEQA, managing those values that make the resource significant will be addressed.

Are Native American cemeteries and graves at risk? Protecting Native American burials has always been of central concern to Indian people. Laws protecting unmarked Indian graves were passed in 1988 for private and public lands in California and in 1990 for Federal lands across the Nation. Determining who owns the land where a Native American burial is found is key to knowing which law applies: the California Codes (Item 1-23) for private and non-Federally controlled public
lands in California (State, City or County Parks, etc.); or National NAGPRA (Items 1-19 and 1-20) for Federal lands in the State (lands administered by US Forest Service, BLM, National Park Service, etc.). Each law sets forth a process for consulting with the appropriate Native Americans to decide and implement a final disposition plan for handling the discovery in a respectful and timely manner.

Is repatriation an issue? Repatriation of human remains, grave goods, sacred objects and objects of culturally patrimony housed in various museums and depositories is addressed by a California State NAGRPA law (Item 1-25) and a Federal NAGPRA law (Items 1-19 and 1-20). Regulations for Federal NAGPRA are also included (Item 1-20).

Is ongoing activity affecting the integrity of an important resource? Strong penalties for robbing Indian burial grounds, maliciously defacing rock art, or digging up artifacts for personal profit also depend on where the illegal activity took place. If such activities took place on Federal lands, then ARPA, the Archaeological Resources Protection Act and its regulations (43 CFR 7) apply (Items 1-17 and 1-18). If a person is caught desecrating Indian graves on private, State or other non-Federal public lands, then the California Codes apply (see Items 1-23 and 1-24). If Native American heritage sites are illegally excavated or disturbed on State or other non-Federal public lands, then the new California Senate Bill 1816, which passed in 2004, applies (see 1-26). Your working with and educating local law enforcement officials is crucial to making these laws work as deterrents to inappropriate behavior. Educating our youth and others is also a way to promote respect for the feelings of contemporary Indian people and appreciation of Native American cultural resources.

Consultation with Native Americans has become more important and integral to planning and site protection, and has been codified by recent laws and amendments (see Items 1-4, 1-9, 1-10, 1-12, 1-26). Consultation guidelines from various sources are provided herein (Items 1-27, Items 1-35 through 1-38).

California’s so-called “Sacred Sites Act” passed in 2004 (Senate Bill 18), providing basis for local governments (Counties, Cities, etc.) to consult with local Native American tribes when amending their General Plans, among other directives. Of interest, this law offers the opportunity for California Indian tribes to receive ‘Conservation Easements’ as a way to protect culturally sensitive places (for related information, see Items 1-28 through 1-33).

Concerned about the status and confidentiality of information on cultural resources? State and Federal agency representatives are required by law and policy to protect cultural resources by ensuring the confidentiality of information about location and content. Historic preservation laws recognize the need to protect the confidentiality of certain information—locations of places that may be subject to looting or desecration, testimony of traditional Indian religious leaders (see Item 1-8), knowledge only tribal members should have, etc.

Want to take an active role in helping develop or pass new laws? This compilation will give you a good overview of what laws are in place at the State and Federal levels. It’s up to you to decide if these laws are adequate or need changing, or if new laws are needed.
AN INTRODUCTION TO
CULTURAL RESOURCES MANAGEMENT


WHAT ARE CULTURAL RESOURCES?

Cultural resources relate only to remains and sites associated with human activities and include the following:
- Prehistoric and ethnohistoric Native American archaeological sites;
- Historic archaeological sites;
- Historic buildings;
- Elements or areas of the natural landscape which have traditional cultural significance.

Prehistoric and Ethnohistoric Native American Archaeological Sites

Prehistoric sites represent the material remains of Native American societies and their activities. Ethnohistoric sites are defined as Native American settlements occupied after the arrival of European settlers in California. Such sites include villages, seasonal camp sites, stone tool quarry sites, hunting and butchering sites, traditional trails, and sites with rock carvings or paintings.

Archaeologists identify such sites by the presence of one or more of the following:
- Stone flakes made of chert, jasper, quartzite, quartz;
- Basalt, obsidian, and other rock types;
- Shell, animal bone, and/or fish bone;
- Groundstone tools used for grinding seeds;
- Plant foods, such as manos, metates, or bedrock mortars;
- Artifacts, such as arrow or spear points;
- Fragments of pottery vessels;
- Dark, ashy soil, called "midden";
- Circular depressions representing houses or ceremonial structures.

Areas of Traditional Cultural Significance

These are areas that have been, and often continue to be, of economic and/or religious significance to peoples today. They include Native American sacred areas where religious ceremonies are practiced or which are central to their origins as a people. They also include areas where Native Americans gather plants for food, medicinal, or economic purposes. California State Law provides a certain measure of protection for such resources.
WHOSE CULTURAL RESOURCES?

The study and preservation of California's Native American cultural resources are important to all Californians. Both State and Federal governments have recognized the importance of protecting our Nation's cultural resources since the late nineteenth century. States across the nation have enacted laws designed to protect these resources for today's and future generations.

HOW DO I DEAL WITH CULTURAL RESOURCES?

Selecting Qualified Cultural Resources Managers and Archaeologists

Regional Information Centers (ICs) of the California Historical Resources Information System (CHRIS), and often City Planning Departments and County Planning Departments, maintain lists of professional cultural resources managers and archaeologists and their firms.

There are several ways to judge whether the professional cultural resources manager or archaeologist is qualified for the task at hand:

- For archaeologists, determine in what fields (e.g., prehistoric archaeology, historic archaeology) has been certified by the Register of Professional Archaeologists (see RPA List);
- Determine whether he or she has past experience in dealing with the appropriate resources, for example, by requesting company information and/or the resumes of key personnel. Some Regional Information Centers (ICs) provide lists that specify a professional's areas of expertise;
- Experience working with the local Native Americans.

Cultural Resource Study Phases Under the California Environmental Quality Act (CEQA)

There are three basic phases of concern to the developer, landowner, and County or City Planning Agencies--

Phase I - Identify Cultural Resources
Phase II - Evaluate the Significance of Cultural Resources
Phase III - Treat or Manage Significant Cultural Resources

A qualified professional archaeologist or cultural resources manager should implement all of these phases.

Phase I - Identify Cultural Resources

This phase generally involves four steps:

1. A formal records search at the appropriate Regional Information Center and background research about the area of study (e.g., ethnography, land-use history);
2. A field survey;
3. Interviews and consultations with knowledgeable persons having heritage ties to the cultural resources;
4. A written report.
**Records Search.** For a fee, the professional cultural resources manager or archaeologist requests a formal records search at the appropriate Regional Information Center (IC) of the California Historical Resources Information System (CHRIS) by submitting a USGS topographic map showing the project boundaries (see CHRIS Contacts). This records search will minimally determine the following:

- Whether a part or all of the project area has been previously surveyed for cultural resources;
- Whether any known cultural resources have already been recorded on or adjacent to the project area;
- Whether the probability is low, moderate, or high that cultural resources are located within the project area; and
- Whether a field survey is required to determine whether previously unrecorded cultural resources are present.

**Native American Consultation.** Consultation with local California Native Americans is necessary to determine whether a project area contains resources of traditional cultural significance to living Indian communities. Upon request, the Native American Heritage Commission provides contact lists of Native American tribes, groups, and individuals who may have special knowledge about traditional cultural properties.

**Field Survey.** In most instances, a field survey by a professional archaeologist will be required. The purpose of the field survey is to examine the entire property for cultural resources. Except for large projects covering hundreds or thousands of acres, no cultural resources are encountered perhaps 30-40% of the time.

**Site Forms and Written Report.** If cultural resources are identified, these must be properly recorded on official state forms, and a report must be written which describes how the survey was conducted with recommendations for further work, if needed. Copies of both the site forms and the written report must be filed with the appropriate IC. The California Office of Historic Preservation has developed guidelines for the format and content of all types of archaeological reports, and reports will be reviewed by IC staff to determine whether they meet those requirements.

It cannot be stressed enough how important it is for the landowner or developer to complete the Phase I identification stage as early as possible, and City and County Planners are strongly urged to make this recommendation to their applicants. If cultural resources constraints for a project are known from the beginning, it is usually possible to redesign the project to avoid impacts to significant cultural resources, resulting in great savings of both time and money.

**Phase II - Evaluate the Significance of Cultural Resources**
The purpose of this phase is to determine whether a cultural resource is "significant" in accordance with criteria set forth by State (or Federal) law. Only impacts to significant cultural resources determined eligible for inclusion on the California Register of Historical Resources (or eligible for or listed in the National Register of Historic Places) will be considered under the CEQA environmental review process. Non-significant resources are not considered or protected.
The California Register significance criteria (Pub. Res. Code 5024.1, Title 14 CCR, Section 4852) mirror those defined for the National Register. For a cultural resource (i.e., building, site, structure, object, or district) to qualify for the California Register, it must have integrity and meet one or more of the following criteria:

(1) *Is associated with events* that have made a significant contribution to the broad patterns of California's history and cultural heritage;

Examples include: Traditional Cultural Properties (TCPs) such as a mountain peak associated with a Native American creation story; historic and ethnohistoric archaeological sites associated with the Modoc War of 1872-73.

(2) *Is associated with the lives of persons* important in our past;

Examples include: Archaeological sites such as the Stronghold at Lava Beds National Monument that are associated with the life of the Modoc Indian Leader, Captain Jack; TCPs such as a prominent rock that represents one of the first beings in a Tribe's traditional creation story.

(3) *Embodies the distinctive characteristics* of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or

Examples include: Historic buildings that represent different architectural styles through the ages; the Golden Gate Bridge; prehistoric rock art sites.

(4) *Has yielded, or may be likely to yield, information* important in prehistory or history.

These typically include well-preserved, complex prehistoric sites representing ancient Indian villages, or historic archaeological sites associated with ethnic groups (e.g., Chinese) that are not well documented in the written record of California history.

Prehistoric Archaeological Sites. There are many types of prehistoric archaeological sites. Some can be evaluated during the course of the Phase I survey. Others can be evaluated during an extended Phase I survey in which the archaeologist excavates a few shovel test pits to determine whether a subsurface deposit is present.

Perhaps 10-20% of sites encountered, usually those that were habitation sites, may require formal test excavations. It is important to note that test excavations have limited goals and should be limited in scope. These goals include:

- The determination of site boundaries.
- An assessment of the site's integrity, i.e., how intact the site is?
- The evaluation of the site's importance or significance through a study of its features and artifacts.

Large scale excavations are not necessary during the evaluation stage.
Phase III - Treat or Manage Significant Cultural Resources

If Phases I and II (identification and evaluation) determine that no California Register-eligible cultural resources are present within the project area, then no further work is needed. A Negative Declaration can be issued for cultural resources.

If significant cultural resources are identified, there are several ways to treat and mitigate impacts to these resources. These include preservation through:

- Avoidance;
- Site capping (covering with soil);
- Creation of conservation easements; and/or
- Data recovery.

Avoidance. The preferred mitigation measure under the California Environmental Quality Act is site avoidance. If Phase I studies are conducted early on, perhaps 80% of all projects can be designed so as to avoid significant cultural resources. This can be done by ensuring they fall into areas designated as open space or otherwise undeveloped areas. This is the least costly mitigation measure and is favored by archaeologists, local historical societies, and Native American groups.

Site Capping. In those instances where avoidance is not possible, one solution is to cover the site with a layer of fill prior to development. However, before a site can be capped, several requirements must be met. A site cannot be capped until its significance has been determined (under Criterion C above, what important information has or might the site yield through archaeological study?), and its boundaries (horizontal and vertical) have been adequately mapped.

This allows the archaeologist, local Native Americans, and planners to know what has been buried and precisely where it is located. In addition, the fill must be of the appropriate materials and should be thick enough to contain all types of utility trenches and other ground disturbances.

In some instances, site capping may not be feasible due to local soil conditions or because the proposed buildings are so massive that their weight would severely damage the site through compaction. Deed restrictions should be considered to restrict owners from excavating below the fill for any future improvements.

Conservation Easements. In some instances, it maybe possible to deed that portion of the property containing the significant cultural resource.

Data Recovery. This is by far the most costly and often the most time consuming alternative. There are two types of data recovery:

- Data recovery excavations at prehistoric or historic archaeological sites; or
- Data recovery through archival and photographic documentation of historic buildings.

The Discovery of Cultural Resources During Construction

This is to be avoided whenever possible. This can be done by following the recommendations of a professional archaeologist for exploratory trenching and/or archival research in old urban areas. When such exploratory trenching is not practical or feasible, grading or construction monitoring may be recommended as a mitigation measure.
Section 15064.5 of the California Environmental Quality Act, as amended, encourages County or City Planning Agencies to draw up provisions for the inadvertent discovery of archaeological sites. These should include the immediate evaluation of such finds by a professional archaeologist. If the archaeological site is deemed to be a significant cultural resource, impacts should be mitigated by one of the measures described above. If impacts to the site cannot be avoided, sufficient time and funds should be allotted to recover important data through a sample excavation. However, provision should also be made for construction work to continue at other parts of the site while such archaeological excavations take place.

Involvement of Local Native American Representatives in the Cultural Resource Management Process

It is strongly recommended that County or City Planning Agencies involve local Native American groups in the identification, evaluation, and management of cultural resources. Native American leaders and representatives must be kept informed about proposed development projects, particularly those situated in potentially or known sensitive areas, so that their concerns may be heard and considered early and throughout the planning process. It is also recommended that City and County Planners encourage the use of Native American Monitors during the course of archaeological excavations. (See Native American Heritage Commission's Guidelines for Monitors/Consultants of Native American Cultural, Religious, and Burial Sites.)

The Discovery of Human Remains During Construction


PROTECTING CULTURAL RESOURCES

Federal, State or Local laws usually require a project's environmental impact to be assessed. The parties proposing the project must attempt to find ways to avoid or mitigate environmental damage before they can proceed. These requirements apply to projects on public land, and they often apply to projects on private property.

Archaeological and cultural resources are considered a part of the environment. The Native American Heritage Commission maintains a confidential Sacred Lands File of cultural resources important to Native Americans, and reviews environmental impact documents to protect these sites from damage or destruction.

Native American cultural resources can be divided into three categories:

1. Native American skeletal remains and grave-related artifacts. Different types of burials may occur in one geographic area inhabited by the same tribal group, especially if it was inhabited over an extended period of time. There is no way to generalize about the burial practices of California Native Americans; the possibility of discovering remains and methods for preventing or minimizing disturbance of burials must be evaluated individually for each project. Native American skeletal remains and grave goods discovered on private or State lands in California are protected under State law; such
remains and offerings found on Federal or Tribal lands are protected under Federal law (NAGPRA).

(2) **Traditional Cultural Properties (TCPs).** Traditional locations for events or rites with spiritual significance. A dance ground, a place for gathering traditional medicine items, or a place for an Indian doctor or shaman to gather strength might be a spiritual site. It could be a prominent peak, a rock formation, a quiet glen, or a cave. TCPs may also include villages, campsites, gathering and harvesting areas, quarries, tool manufacturing areas, rock painting and carving areas, and burial grounds. See *National Register Bulletin 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties.*

(3) **Artifacts.** Cultural remains left by past peoples. Artifacts often found in California may be made of fish or animal bone, shells of sea animals, stone or wood.

**CULTURAL RESOURCES: AN OPPORTUNITY NOT A PROBLEM**

Developers can receive benefits from cultural resources in several ways. First, the public benefit of data recovery projects can be publicized. An archaeologist with the appropriate experience can use public participation for the benefit of the resources and the developer in a variety of ways. For example, the public enjoys visiting archaeological sites; tours of a large data recovery project can go a long way in promoting community goodwill for a development project. Sometimes a community would like to see exhibits on the history of the area, often using placards or signs, incorporated into the design of the development project. The critical factor is to find the ways in which the community would like to participate, and to incorporate their goals into the design of the cultural resources project. The archaeologist managing such a project must have past experience in working with the public and the press. The good press and community good will that can come from this type of project have obvious benefits to the developer.

There can also be economic advantages in preserving or incorporating cultural resources in planned developments. These advantages usually take the form of tax credits or tax incentives. On the federal level, a tax credit of up to 20% is offered for the rehabilitation of significant historic buildings. These buildings must meet the following criteria:

1. They must be included on the National Register of Historic Places or meet state certification criteria;
2. The rehabilitation must be done to the Secretary of the Interior's standards; and
3. The planned use must be income-producing.

The California Office of Historic Preservation can offer guidance to developers on evaluating their property's eligibility for the federal tax credit program. (See [http://www.ohp.ca.gov](http://www.ohp.ca.gov)) Other incentive programs may apply to a particular property; it is recommended that developers discuss this issue with the appropriate planning agencies for their particular project. For example, other programs may include benefits for granting easements (see above for conservation easements), for rehabilitating facades, and for easing zoning requirements.
SCENARIOS: WHICH LAW APPLIES?

CONSIDERING EFFECTS OF PROPOSED PROJECTS ON CULTURAL RESOURCES: Which law applies?

TIPS: Ask the following key questions to figure out which law applies:

1. Who owns or has direct jurisdiction (control) over the property where the proposed project will occur? Is the property privately owned, or Federal or Tribal (Reservation) lands?
   - If the property is Federal or Tribal, then Section 106 applies.
   - If the property is not Federal or Tribal (i.e., it is privately owned, or is owned by the State or a City), then CEQA may apply – but you must ask the second question to be sure if that is the only law that applies.

2. If the project is located on non-Federal or non-Tribal land, will it involve Federal funding, permitting or oversight by a Federal agency?
   - If the answer is yes, then Section 106 will apply.
   - If the answer is no, then only CEQA will apply.

SCENARIOS:

A cultural resources study is required by the County for a proposed housing subdivision...

WHICH LAW APPLIES? CEQA. WHY? A County ("local government") is the Lead Agency for CEQA (State Law). Tip: Verify that the property is privately owned and not located within the exterior boundaries of an Indian Reservation.

The above proposed housing subdivision requires a permit from the US Army Corps of Engineers (USCOE) before it can proceed...

WHICH LAWS APPLY? CEQA and Section 106. WHY? CEQA applies because the County is the Lead Agency for considering effects on private properties in California. Section 106 applies because issuance of the permit by USCOE, a Federal agency, constitutes a Federal "undertaking".

The National Park Service (NPS) proposes to close a campground and restore the land at a popular National Park...

WHICH LAW APPLIES? Section 106. WHY? The proposed project involves Federal (NPS) land, funding and oversight.

Caltrans with some funding from the Federal Highways Administration (FHWA) proposes to widen the highway through a rural area of California to improve traffic safety...

WHICH LAW APPLIES? Section 106. WHY? Funding from a Federal agency (FHWA) constitutes an "undertaking" subject to Section 106 review.
TIPS: Ask the following key question to figure out which burial protection law applies:

(1) Who owns or has direct control and jurisdiction over the property where the discovery was made?

- If the answer is Federal or Tribal (Reservation) lands, then Federal NAGPRA applies.
- If the answer is private property, or state or city (local government) owned, then the answer is the California Burial Protection Codes.

Note: Even if the remains are discovered on private or local government land during a project that requires Section 106 review (because it meets the definition of a Federal "undertaking"), the California Burial Protection Codes apply and not Federal NAGPRA.

SCENARIOS: A Native American burial is discovered ...

-- on private property.
WHICH LAW APPLIES? California Burial Protection Codes.

-- on a construction site for a new major retail store.
WHICH LAW APPLIES? California Burial Protection Codes, assuming that the property is privately owned (even by a major corporation).

-- in Point Lobos State Park.
WHICH LAW APPLIES? California Burial Protection Codes.

-- in Eureka City Park.
WHICH LAW APPLIES? California Burial Protection Codes.

-- in downtown Los Angeles.
WHICH LAW APPLIES? It depends: Who owns the land? Some Federal buildings and properties are located in major urban areas. If the discovery site is private or controlled by a local government (State or City), then California Burial Protection Codes apply. If the discovery site is Federal land, then Federal NAGPRA applies.

--on Six Rivers National Forest.
WHICH LAW APPLIES? Federal NAGPRA.

--on the Hoopa Valley Indian Reservation.
WHICH LAW APPLIES? Federal NAGPRA.

--along a State Highway in the Caltrans right-of-way (ROW).
WHICH LAW APPLIES? It depends: Who owns the land where the ROW is located? A ROW does not mean "ownership," but a legal right to access a particular property. That property may be private land, or controlled by a Local Government, or Federal land such as a National Forest or Bureau of Land Management (BLM).
SUMMARY OF KEY FEDERAL CULTURAL RESOURCES PROTECTION LAWS

(From Native American Heritage Commission Website http://www.nahc.ca.gov, 9/16/00)

Antiquities Act of 1906
An act for the preservation of American antiquities. Authorizes the President to designate as National Monuments those areas of the public domain containing historic landmarks, historic and prehistoric structures, and objects of historic or scientific interests located on federally owned or controlled lands. The act further provides criminal sanctions for the unauthorized excavation, injury, or destruction of prehistoric or historic ruins and objects of antiquity. The Secretaries of the Interior, Agriculture, and Defense are authorized to issue permits for archaeological investigations on lands under their control to recognized educational and scientific institutions for the purpose of systematically and professionally gathering data of scientific value.

National Historic Preservation Act of 1966
An act to establish a program for the preservation of additional historic properties throughout the nation. Authorizes the Secretary of the Interior to maintain a National Register of Historic Places; directs the Secretary to approve state historic preservation programs that provide for a State Historic Preservation Officer with adequate qualified professional staff, a state historic preservation review board, and public participation in the state program; authorizes a matching grants-in-aid program to the states; directs federal agencies to take into account the effects of their activities and programs on historic properties; establishes the Advisory Council on Historic Preservation to advise the President, Congress, and federal agencies on historic preservation matters; gives the Advisory Council the authority to issue regulations instructing federal agencies on how to implement Section 106 of the act; establishes the Certified Local Government program; establishes a National Historic Preservation Fund program; and codifies the National Historic Landmarks program.

National Environmental Policy Act of 1969
Declares that it is the policy of the federal government to preserve important historic, cultural, and natural aspects of the Nation's heritage. The act further requires an interdisciplinary study of the impacts associated with federal program. Federal agencies must prepare environmental impact statements prior to making decisions about projects that may significantly affect the quality of the human environment.

Native American Religious Freedom Act of 1978
An act setting forth a policy of protecting and preserving the rights of Native Americans to Freedom of Religion. Makes it a policy of the federal government to protect and preserve for American Indians, Eskimos, Aleuts, and Native Hawaiians their inherent rights of freedom to believe, express, and exercise their traditional religions. It allows them access to sites, use and possession of sacred objects, and the freedom to worship through ceremonial and traditional rites.

Archaeological Resources Protection Act of 1979
An act to amend the Antiquities Act of 1906. Regulates the taking of archaeological resources on federal lands by setting a broad policy that archaeological resources are important for the nation and
should be protected. The act further establishes a requirement for the excavation or removal of 
aræheologicai resources from Ìhe public or Indian lands with special permits. Violations of the law 
include civil and criminal penalties of fines and imprisonment.

**Native American Graves Protection and Repatriation Act of 1990**
An act to provide for the protection of Native American graves. Requires federal agencies and 
recipients of federal funds, such as universities, museums, and governmental agencies, to document 
Native American human remains and cultural items within their collection, to notify all Indian tribes 
and Native Hawaiian organizations that are or are likely to be affiliated with these holdings, and to 
provide an opportunity for the repatriation of appropriate human remains or cultural items. Cultural 
items include associated and unassociated funerary objects, sacred objects, and objects of cultural 
patrimony.
AN ACT to Establish a Program for the Preservation of Additional Historic Properties throughout the Nation, and for Other Purposes.

Section 1
[16 U.S.C. 470 — Short title of the Act]

(a) This Act may be cited as the "National Historic Preservation Act".

[Purpose of the Act]

(b) The Congress finds and declares that —

(1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;

(2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

(3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;

(4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

(5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;

(6) the increased knowledge of our historic resources, the establishment of better means of
identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Section 2


It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to—

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiians, and local governments;

(3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;

(4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;

(5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and

(6) assist State and local governments, Indian tribes and Native Hawaiian organizations and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

TITLE I
Section 101

[16 U.S.C. 470a(a) — National Register of Historic Places, expansion and maintenance]

(a) (1) (A) The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture. Notwithstanding section
1125(c) of Title 15 [of the U.S. Code], buildings and structures on or eligible for inclusion on the National Register of Historic Places (either individually or as part of a historic district), or designated as an individual landmark or as a contributing building in a historic district by a unit of State or local government, may retain the name historically associated with the building or structure.

[National Historic Landmarks, designation]

(B) Properties meeting the criteria for National Historic Landmarks established pursuant to paragraph (2) shall be designated as "National Historic Landmarks" and included on the National Register, subject to the requirements of paragraph (6). All historic properties included on the National Register on December 12, 1980 [the date of enactment of the National Historic Preservation Act Amendments of 1980], shall be deemed to be included on the National Register as of their initial listing for purposes of this Act. All historic properties listed in the Federal Register of February 6, 1979, as "National Historic Landmarks" or thereafter prior to the effective date of this Act are declared by Congress to be National historic Landmarks of national historic significance as of their initial listing as such in the Federal Register for purposes of this Act and the Act of August 21, 1935 (49 Stat.666) [16 U.S.C. 461 to 467]; except that in cases of National Historic Landmark districts for which no boundaries have been established, boundaries must first be published in the Federal Register.

[Criteria for National Register and National Historic Landmarks and regulations]

(2) The Secretary in consultation with national historic and archaeological associations, shall establish or revise criteria for properties to be included on the National Register and criteria for National Historic Landmarks, and shall also promulgate or revise regulations as may be necessary for—

(A) nominating properties for inclusion in, and removal from, the National Register and the recommendation of properties by certified local governments;

(B) designating properties as National Historic Landmarks and removing such designation;

(C) considering appeals from such recommendations, nomination, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);

(D) nominating historic properties for inclusion in the World Heritage List in accordance with the terms of the Convention concerning the Protection of the World Cultural and Natural Heritage;

(E) making determinations of eligibility of properties for inclusion on the National Register, and

(F) notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion on the National Register, for designation as a National Historic Landmark or for nomination to the World Heritage List.

[Nominations to the National Register]

(3) Subject to the requirements of paragraph (6), any State which is carrying out a program approved under subsection (b) of this section, shall nominate to the Secretary properties which
meet the criteria promulgated under subsection (a) of this section for inclusion on the National Register. Subject to paragraph (6), any property nominated under this paragraph or under section 110 (a)(2) of this Act shall be included on the National Register on the date forty-five days after receipt by the Secretary of the nomination and the necessary documentation, unless the Secretary disapproves such nomination within such forty-five day period or unless an appeal is filed under paragraph (5).

[Nominations from individuals and local governments]

(4) Subject to the requirements of paragraph (6) the Secretary may accept a nomination directly from any person or local government for inclusion of a property on the National Register only if such property is located in a State where there is no program approved under subsection (b) of this section. The Secretary may include on the National Register any property for which such a nomination is made if he determines that such property is eligible in accordance with the regulations promulgated under paragraph (2). Such determinations shall be made within ninety days from the date of nomination unless the nomination is appealed under paragraph (5).

[Appeals of nominations]

(5) Any person or local government may appeal to the Secretary a nomination of any historic property for inclusion on the National Register and may appeal to the Secretary the failure or refusal of a nominating authority to nominate a property in accordance with this subsection.

[Owner participation in nomination process]

(6) The Secretary shall promulgate regulations requiring that before any property or district may be included on the National Register or designated as a National Historic Landmark, the owner or owners of such property, or a majority of the owners of the properties within the district in the case of an historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion or designation. If the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of an historic district, object to such inclusion or designation, such property shall not be included on the National Register or designated as a National Historic Landmark until such objection is withdrawn. The Secretary shall review the nomination of the property or district where any such objection has been made and shall determine whether or not the property or district is eligible for such inclusion or designation, and if the Secretary determines that such property or district is eligible for such inclusion or designation, he shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official and the owner or owners of such property, of his determination. The regulations under this paragraph shall include provisions to carry out the purposes of this paragraph in the case of multiple ownership of a single property.

[Regulations for curation, documentation, and local government certification]

(7) The Secretary shall promulgate, or revise, regulations —

(A) ensuring that significant prehistoric and historic artifacts, and associated records, subject to section 110 of this Act [16 U.S.C. 470h-2], the Act of June 27, 1960 (16 U.S.C. 469c), and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa and following) are
deposited in an institution with adequate long-term curatorial capabilities;

(B) establishing a uniform process and standards for documenting historic properties by public agencies and private parties for purposes of incorporation into, or complementing, the national historic architectural and engineering records within the Library of Congress; and

(C) certifying local governments, in accordance with subsection (c)(1) of this section and for the allocation of funds pursuant to section 103 (c) of this Act [16 U.S.C. 470c(c)].

[Review threats to eligible and listed properties and recommend action]

(8) The Secretary shall, at least once every 4 years, in consultation with the Council and with State Historic Preservation Officers, review significant threats to properties included in, or eligible for inclusion on, the National Register, in order to —

(A) determine the kinds of properties that may be threatened;

(B) ascertain the causes of the threats; and

(C) develop and submit to the President and Congress recommendations for appropriate action.

[16 U.S.C. 470a(b) — State Historic Preservation Programs]

(b) (1) The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the National Trust for Historic Preservation, shall promulgate or revise regulations for State Historic Preservation Programs. Such regulations shall provide that a State program submitted to the Secretary under this section shall be approved by the Secretary if he determines that the program

[Designation of the State Historic Preservation Officer (SHPO)]

(A) provides for the designation and appointment by the Governor of a "State Historic Preservation Officer" to administer such program in accordance with paragraph (3) and for the employment or appointment by such officer of such professionally qualified staff as may be necessary for such purposes;

[Designation of the State Review Board]

(B) provides for an adequate and qualified State historic preservation review board designated by the State Historic Preservation Officer unless otherwise provided for by State law; and

(C) provides for adequate public participation in the State Historic Preservation Program, including the process of recommending properties for nomination to the National Register.

[Review of State programs]

(2) (A) Periodically, but not less than every 4 years after the approval of any State program under this subsection, the Secretary, in consultation with the Council on the appropriate provisions of this Act, and in cooperation with the State Historic Preservation Officer, shall evaluate the program to determine whether it is consistent with this Act.
(B) If, at any time, the Secretary determines that a major aspect of a State program is not consistent with this Act, the Secretary shall disapprove the program and suspend in whole or in part any contracts or cooperative agreements with the State and the State Historic Preservation Officer under this Act, until the program is consistent with this Act, unless the Secretary determines that the program will be made consistent with this Act within a reasonable period of time.

(C) The Secretary, in consultation with State Historic Preservation Officers, shall establish oversight methods to ensure State program consistency and quality without imposing undue review burdens on State Historic Preservation Officers.

(D) At the discretion of the Secretary, a State system of fiscal audit and management may be substituted for comparable Federal systems so long as the State system—

(i) establishes and maintains substantially similar accountability standards; and

(ii) provides for independent professional peer review.

The Secretary may also conduct periodic fiscal audits of State programs approved under this section as needed and shall ensure that such programs meet applicable accountability standards.

[SHPO responsibilities]

(3) It shall be the responsibility of the State Historic Preservation Officer to administer the State Historic Preservation Program and to—

(A) in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;

(B) identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;

(C) prepare and implement a comprehensive statewide historic preservation plan;

(D) administer the State program of Federal assistance for historic preservation within the State;

(E) advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;

(F) cooperate with the Secretary, the Advisory Council on Historic Preservation, and other Federal and State agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;

(G) provide public information, education, and training, and technical assistance in historic preservation;

(H) cooperate with local governments in the development of local historic preservation programs.
programs and assist local governments in becoming certified pursuant to subsection (c) of this section;

(I) consult with the appropriate Federal agencies in accordance with this Act on —

(i) Federal undertakings that may affect historic properties; and

(ii) the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties; and

(J) advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.

[Arrangements with nonprofit organizations]

(4) Any State may carry out all or any part of its responsibilities under this subsection by contract or cooperative agreement with any qualified nonprofit organization or educational institution.

[Approval of existing programs]

(5) Any State historic preservation program in effect under prior authority of law may be treated as an approved program for purposes of this subsection until the earlier of —

(A) the date on which the Secretary approves a program submitted by the State under this subsection, or

(B) three years after October 30, 1992 [the date of the enactment of the National Historic Preservation Act Amendments of 1992].

[Contracts or cooperative agreements with State Historic Preservation Officers]

(6) (A) Subject to subparagraphs (C) and (D), the Secretary may enter into contracts or cooperative agreements with a State Historic Preservation Officer for any State authorizing such Officer to assist the Secretary in carrying out one or more of the following responsibilities within that State —

(i) Identification and preservation of historic properties.

(ii) Determination of the eligibility of properties for listing on the National Register.

(iii) Preparation of nominations for inclusion on the National Register.

(iv) Maintenance of historical and archaeological data bases.

(v) Evaluation of eligibility for Federal preservation incentives.

Nothing in this paragraph shall be construed to provide that any State Historic Preservation Officer or any other person other than the Secretary shall have the authority to maintain the National Register for properties in any State.
(B) The Secretary may enter into a contract or cooperative agreement under subparagraph (A) only if

(i) the State Historic Preservation Officer has requested the additional responsibility;

(ii) the Secretary has approved the State historic preservation program pursuant to subsection (b)(1) and (2) of this section;

(iii) the State Historic Preservation Officer agrees to carry out the additional responsibility in a timely and efficient manner acceptable to the Secretary and the Secretary determines that such Officer is fully capable of carrying out such responsibility in such manner;

(iv) the State Historic Preservation Officer agrees to permit the Secretary to review and revise, as appropriate in the discretion of the Secretary, decisions made by the Officer pursuant to such contract or cooperative agreement; and

(v) the Secretary and the State Historic Preservation Officer agree on the terms of additional financial assistance to the State, if there is to be any, for the costs of carrying out such responsibility.

(C) For each significant program area under the Secretary's authority, the Secretary shall establish specific conditions and criteria essential for the assumption by State Historic Preservation Officers of the Secretary's duties in each such program.

(D) Nothing in this subsection shall have the effect of diminishing the preservation programs and activities of the National Park Service.

[16 U.S.C. 470a(c) — Certification of local governments]

(c) (1) Any State program approved under this section shall provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of this Act and provide for the transfer, in accordance with section 103(c) of this Act [16 U.S.C. 470c(c)], of a portion of the grants received by the States under this Act, to such local governments. Any local government shall be certified to participate under the provisions of this section if the applicable State Historic Preservation Officer, and the Secretary, certifies that the local government —

(A) enforces appropriate State or local legislation for the designation and protection of historic properties;

(B) has established an adequate and qualified historic preservation review commission by State or local legislation;

(C) maintains a system for the survey and inventory of historic properties that furthers the purposes of subsection (b) of this section;

(D) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register;
(E) satisfactorily performs the responsibilities delegated to it under this Act.

Where there is no approved State program, a local government may be certified by the Secretary if he determines that such local government meets the requirements of subparagraphs (A) through (E); and in any such case the Secretary may make grants-in-aid to the local government for purposes of this section.

[Participation of certified local governments in National Register nominations]

(2) (A) Before a property within the jurisdiction of the certified local government may be considered by the State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission. The commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register. Within sixty days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and his recommendation to the state Historic Preservation Officer. Except as provided in subparagraph (B), after receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall make the nomination pursuant to subsection (a) of this subsection. The State may expedite such process with the concurrence of the certified local government.

(B) If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further action, unless within thirty days of the receipt of such recommendation by the State Historic Preservation Officer an appeal is filed with the State. If such an appeal is filed, the State shall follow the procedures for making a nomination pursuant to subsection (a) of this section. Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.

(3) Any local government certified under this section or which is making efforts to become so certified shall be eligible for funds under the provision of section 103 (c) of this Act [16 U.S.C. 470c(c)], and shall carry out any responsibilities delegated to it in accordance with such terms and conditions as the Secretary deems necessary or advisable.

[Definitions]

(4) For the purposes of this section the term —

(A) "designation" means the identification and registration of properties for protection that meet criteria established by the State or the locality for significant historic and prehistoric resources within the jurisdiction of a local government; and

(B) "protection" means a local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic properties designated pursuant to this subsection.
[16 U.S.C. 470a(d) — Establish program and regulations to assist Indian tribes]

(d) (1) (A) The Secretary shall establish a program and promulgate regulations to assist Indian tribes in preserving their particular historic properties. The Secretary shall foster communication and cooperation between Indian tribes and State Historic Preservation Officers in the administration of the national historic preservation program to ensure that all types of historic properties and all public interests in such properties are given due consideration, and to encourage coordination among Indian tribes, State Historic Preservation Officers, and Federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic properties.

(B) The program under subparagraph (A) shall be developed in such a manner as to ensure that tribal values are taken into account to the extent feasible. The Secretary may waive or modify requirements of this section to conform to the cultural setting of tribal heritage preservation goals and objectives. The tribal programs implemented by specific tribal organizations may vary in scope, as determined by each tribe's chief governing authority.

(C) The Secretary shall consult with Indian tribes, other Federal agencies, State Historic Preservation Officers, and other interested parties and initiate the program under subparagraph (A) by not later than October 1, 1994.

[Indian Tribes may assume State Historic Preservation Officer functions]

(2) A tribe may assume all or any part of the functions of a State Historic Preservation Officer in accordance with subsections (b)(2) and (b)(3) of this section, with respect to tribal lands, as such responsibilities may be modified for tribal programs through regulations issued by the Secretary if —

(A) the tribe's chief governing authority so requests;

(B) the tribe designates a tribal preservation official to administer the tribal historic preservation program, through appointment by the tribe's chief governing authority or as a tribal ordinance may otherwise provide;

(C) the tribal preservation official provides the Secretary with a plan describing how the functions the tribal preservation official proposes to assume will be carried out;

(D) the Secretary determines, after consultation with the tribe, the appropriate State Historic Preservation Officer, the Council (if the tribe proposes to assume the functions of the State Historic Preservation Officer with respect to review of undertakings under section 106 of this Act), and other tribes, if any, whose tribal or aboriginal lands may be affected by conduct of the tribal preservation program —

(i) that the tribal preservation program is fully capable of carrying out the functions specified in the plan provided under subparagraph (C);

(ii) that the plan defines the remaining responsibilities of the Secretary and the State Historic Preservation Officer; and

(iii) that the plan provides, with respect to properties neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe or otherwise protected by Federal law.
tribe, at the request of the owner thereof, the State Historic Preservation Officer, in addition to the tribal preservation official, may exercise the historic preservation responsibilities in accordance with subsections (b)(2) and (b)(3) of this section; and

(E) based on satisfaction of the conditions stated in subparagraphs (A), (B), (C), and (D), the Secretary approves the plan.

(3) In consultation with interested Indian tribes, other Native American organizations and affected State Historic Preservation Officers, the Secretary shall establish and implement procedures for carrying out section 103(a) of this Act with respect to tribal programs that assume responsibilities under paragraph (2).

(4) At the request of a tribe whose preservation program has been approved to assume functions and responsibilities pursuant to paragraph (2), the Secretary shall enter into contracts or cooperative agreements with such tribe permitting the assumption by the tribe of any part of the responsibilities referred to in subsection (b)(6) of this section on tribal land, if—

(A) the Secretary and the tribe agree on additional financial assistance, if any, to the tribe for the costs of carrying out such authorities;

(B) the Secretary finds that the tribal historic preservation program has been demonstrated to be sufficient to carry out the contract or cooperative agreement and this Act; and

(C) the contract or cooperative agreement specifies the continuing responsibilities of the Secretary or of the appropriate State Historic Preservation Officers and provides for appropriate participation by—

(i) the tribe's traditional cultural authorities;

(ii) representatives of other tribes whose traditional lands are under the jurisdiction of the tribe assuming responsibilities; and

(iii) the interested public.

(5) The Council may enter into an agreement with an Indian tribe to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the Council to govern compliance with section 106 of this Act, if the Council, after consultation with the tribe and appropriate State Historic Preservation Officers, determines that the tribal preservation regulations will afford historic properties consideration equivalent to those afforded by the Council's regulations.

[Traditional religious and cultural properties may be eligible for listing in the National Register]

(6) (A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.

(B) In carrying out its responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A).
(C) In carrying out his or her responsibilities under subsection (b)(3) of this section, the State Historic Preservation Officer for the State of Hawaii shall—

(i) consult with Native Hawaiian organizations in assessing the cultural significance of any property in determining whether to nominate such property to the National Register;

(ii) consult with Native Hawaiian organizations in developing the cultural component of a preservation program or plan for such property; and

(iii) enter into a memorandum of understanding or agreement with Native Hawaiian organizations for the assessment of the cultural significance of a property in determining whether to nominate such property to the National Register and to carry out the cultural component of such preservation program or plan.

[16 U.S.C. 470a(e) — Grants to States]

(e) (1) The Secretary shall administer a program of matching grants to the States for the purposes of carrying out this Act.

[Grants to the National Trust]

(2) The Secretary may administer grants to the National Trust for Historic Preservation in the United States, chartered by Act of Congress approved October 26, 1949 (63 Stat. 927) [16 U.S.C. 468], consistent with the purposes of its charter and this Act.

[Direct grants for threatened National Historic Landmarks, demonstration projects, training, and displacement prevention]

(3) (A) In addition to the programs under paragraphs (1) and (2), the Secretary shall administer a program of direct grants for the preservation of properties included on the National Register. Funds to support such program annually shall not exceed 10 per centum of the amount appropriated annually for the fund established under section 108 of this Act. These grants may be made by the Secretary, in consultation with the appropriate State Historic Preservation Officer—

(i) for the preservation of National Historic Landmarks which are threatened with demolition or impairment and for the preservation of historic properties of World Heritage significance,

(ii) for demonstration projects which will provide information concerning professional methods and techniques having application to historic properties,

(iii) for the training and development of skilled labor in trades and crafts, and in analysis and curation, relating to historic preservation, and

(iv) to assist persons or small businesses within any historic district included in the National Register to remain within the district.
(B) The Secretary may also, in consultation with the appropriate State Historic Preservation Officer, make grants or loans or both under this section to Indian tribes and to nonprofit organizations representing ethnic or minority groups for the preservation of their cultural heritage.

(C) Grants may be made under subparagraph (A)(i) and (iv) only to the extent that the project cannot be carried out in as effective a manner through the use of an insured loan under section 104 of this Act.

(4) Grants may be made under this subsection for the preservation, stabilization, restoration, or rehabilitation of religious properties listed in the National Register of Historic Places, provided that the purpose of the grant is secular, does not promote religion, and seeks to protect those qualities that are historically significant. Nothing in this paragraph shall be construed to authorize the use of any funds made available under this section for the acquisition of any property referred to in the preceding sentence.

(5) The Secretary shall administer a program of direct grants to Indian tribes and Native Hawaiian organizations for the purpose of carrying out this Act as it pertains to Indian tribes and Native Hawaiian organizations. Matching fund requirements may be modified. Federal funds available to a tribe or Native Hawaiian organization may be used as matching funds for the purposes of the tribe's or organization's conducting its responsibilities pursuant to this section.

(6) (A) As a part of the program of matching grant assistance from the Historic Preservation Fund to States, the Secretary shall administer a program of direct grants to the Federated States of Micronesia, the Republic of the Marshall Islands, the Trust Territory of the Pacific Islands, and the Republic of Palau (referred to as the Micronesian States) in furtherance of the Compact of Free Association between the United States and the Federated States of Micronesia and the Marshall Islands, approved by the Compact of Free Association Act of 1985 (48 U.S.C. 1681 note), the Trusteehip Agreement for the Trust Territory of the Pacific Islands, and the Compact of Free Association between the United States and Palau, approved by the Joint Resolution entitled “Joint Resolution to approve the ‘Compact of Free Association’ between the United States and Government of Palau, and for other purposes” (48 U.S.C. 1681 note). The goal of the program shall be to establish historic and cultural preservation programs that meet the unique needs of each Micronesian State so that at the termination of the compacts the programs shall be firmly established. The Secretary may waive or modify the requirements of this section to conform to the cultural setting of those nations.

(B) The amounts to be made available to the Micronesian States shall be allocated by the Secretary on the basis of needs as determined by the Secretary. Matching funds may be waived or modified.
[16 U.S.C. 470a(f) — Prohibition on compensating intervenors]

(f) No part of any grant made under this section may be used to compensate any person intervening in any proceeding under this Act.

[16 U.S.C. 470a(g) — Guidelines for Federal agency responsibilities]

(g) In consultation with the Advisory Council on Historic Preservation, the Secretary shall promulgate guidelines for Federal agency responsibilities under section 110 of this Act.

[16 U.S.C. 470a(h) — Preservation standards for federally owned properties]

(h) Within one year after December 12, 1980 [the date of enactment of the National Historic Preservation Act Amendments of 1980], the Secretary shall establish, in consultation with the Secretaries of Agriculture and Defense, the Smithsonian Institution, and the Administrator of the General Services Administration, professional standards for the preservation of historic properties in Federal ownership or control.

[16 U.S.C. 470a(i) — Technical advice]

(i) The Secretary shall develop and make available to Federal agencies, State and local governments, private organizations and individuals, and other nations and international organizations pursuant to the World Heritage Convention, training in, and information concerning, professional methods and techniques for the preservation of historic properties and for the administration of the historic preservation program at the Federal, State, and local level. The Secretary shall also develop mechanisms to provide information concerning historic preservation to the general public including students.

[16 U.S.C. 470a(j) — Develop and implement a comprehensive preservation education and training program]

(j) (1) The Secretary shall, in consultation with the Council and other appropriate Federal, tribal, Native Hawaiian, and non-Federal organizations, develop and implement a comprehensive preservation education and training program.

(2) The education and training program described in paragraph (1) shall include—

(A) new standards and increased preservation training opportunities for Federal workers involved in preservation-related functions;

(B) increased preservation training opportunities for other Federal, State, tribal and local government workers, and students;

(C) technical or financial assistance, or both, to historically black colleges and universities, to tribal colleges, and to colleges with a high enrollment of Native Americans or Native Hawaiians, to establish preservation training and degree programs; and

(D) coordination of the following activities, where appropriate, with the National Center for Preservation Technology and Training—

(i) distribution of information on preservation technologies;
(ii) provision of training and skill development in trades, crafts, and disciplines related to historic preservation in Federal training and development programs; and

(iii) support for research, analysis, conservation, curation, interpretation, and display related to preservation.

Section 102

[16 U.S.C. 470b(a) — Grant requirements]

(a) No grant may be made under this Act —

(1) unless application therefore is submitted to the Secretary in accordance with regulations and procedures prescribed by him;

(2) unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) [16 U.S.C. 4601-4];

(3) for more than 60 percent of the aggregate costs of carrying out projects and programs under the administrative control of the State Historic Preservation Officer as specified in section 101(b)(3) of this Act in any one fiscal year;

(4) unless the grantee has agreed to make such reports, in such form and containing such information as the Secretary may from time to time require;

(5) unless the grantee has agreed to assume, after completion of the project, the total cost of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; and

(6) until the grantee has complied with such further terms and conditions as the Secretary may deem necessary or advisable.

Except as permitted by other law, the State share of the costs referred to in paragraph (3) shall be contributed by non-Federal sources. Notwithstanding any other provision of law, no grant made pursuant to this Act shall be treated as taxable income for purposes of the Internal Revenue Code of 1986 [Title 26 of the U.S. Code].

[16 U.S.C. 470b(b) — Waiver for the National Trust]

(b) The Secretary may in his discretion waive the requirements of subsection (a), paragraphs (2) and (5) of this section for any grant under this Act to the National Trust for Historic Preservation in the United States.

[16 U.S.C. 470b(c*) — State limitation on matching]

[*Technically, subsection (c) was repealed and replaced by two subsection “d”s]

(c*) No State shall be permitted to utilize the value of real property obtained before October 15, 1966
[the date of approval of this Act], in meeting the remaining cost of a project for which a grant is made under this Act.

[16 U.S.C. 470b(d) — Availability of funds]

(d) The Secretary shall make funding available to individual States and the National Trust for Historic Preservation as soon as practicable after execution of a grant agreement. For purposes of administration, grants to individual States and the National Trust each shall be considered to be one grant and shall be administered by the National Park Service as such.

[16 U.S.C. 470b(e) — Administrative Costs]

(e) The total administrative costs, direct and indirect, charged for carrying out State projects and programs may not exceed 25 percent of the aggregate costs except in the case of grants under section 101(c)(6) of this Act.

Section 103

[16 U.S.C. 470c(a) — Basis for apportionment of grants]

(a) The amounts appropriated and made available for grants to the States for the purposes of this Act shall be apportioned among the States by the Secretary on the basis of needs as determined by him.

[16 U.S.C. 470c(b) — Apportionment basis, notice, reapportionment, etc.]

(b) The amounts appropriated and made available for grants to the States for projects and programs under this Act for each fiscal year shall be apportioned among the States as the Secretary determines to be appropriate.

The Secretary shall notify each State of its apportionment under this subsection within thirty days following the date of enactment of legislation appropriating funds under this Act. Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which such notification is given and for two fiscal years thereafter, shall be reapportioned by the Secretary in accordance with this subsection. The Secretary shall analyze and revise as necessary the method of apportionment. Such method and any revision thereof shall be published by the Secretary in the Federal Register.

[16 U.S.C. 470c(c) — Requirements for certified local government pass-through subgrants]

(c) A minimum of 10 per centum of the annual apportionment distributed by the Secretary to each State for the purposes of carrying out this Act shall be transferred by the State, pursuant to the requirements of this Act, to local governments which are certified under section 101(c) of this Act for historic preservation projects or programs of such local governments. In any year in which the total annual apportionment to the States exceeds $65,000,000, one half of the excess shall also be transferred by the States to local governments certified pursuant to section 101(c) of this Act.

[16 U.S.C. 470c(d) — Guidelines for State distribution to certified local governments]

(d) The Secretary shall establish guidelines for the use and distribution of funds under subsection (c) of this section to insure that no local government receives a disproportionate share of the funds available, and may include a maximum or minimum limitation on the amount of funds distributed
to any single local government. The guidelines shall not limit the ability of any State to distribute more than 10 per centum of its annual apportionment under subsection (c) of this section, nor shall the Secretary require any State to exceed the 10 per centum minimum distribution to local governments.

Section 104

[16 U.S.C. 470d(a) — Insured loans for National Register]

(a) The Secretary shall establish and maintain a program by which he may, upon application of a private lender, insure loans (including loans made in accordance with a mortgage) made by such lender to finance any project for the preservation of a property included on the National Register.

[16 U.S.C. 470d(b) — Requirements]

(b) A loan may be insured under this section only if—

1. the loan is made by a private lender approved by the Secretary as financially sound and able to service the loan properly;
2. the amount of the loan, and interest rate charged with respect to the loan, do not exceed such amount, and such a rate, as is established by the Secretary, by rule;
3. the Secretary has consulted the appropriate State Historic Preservation Officer concerning the preservation of the historic property;
4. the Secretary has determined that the loan is adequately secured and there is reasonable assurance of repayment;
5. the repayment period of the loan does not exceed the lesser of forty years or the expected life of the asset financed;
6. the amount insured with respect to such loan does not exceed 90 per centum of the loss sustained by the lender with respect to the loan; and
7. the loan, the borrower, and the historic property to be preserved meet other terms and conditions as may be prescribed by the Secretary, by rule, especially terms and conditions relating to the nature and quality of the preservation work.

[Interest rates]

The Secretary shall consult with the Secretary of the Treasury regarding the interest rate of loans insured under this section.

[16 U.S.C. 470d(c) — Limitation on loan authority]

(c) The aggregate unpaid principal balance of loans insured under this section and outstanding at any one time may not exceed the amount which has been covered into the Historic Preservation Fund pursuant to section 108 of this Act and subsections (g) and (i) of this section, as in effect on December 12, 1980 [the date of the enactment of the Act], but which has not been appropriated for any purpose.
(d) Any contract of insurance executed by the Secretary under this section may be assignable, shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

(e) The Secretary shall specify, by rule and in each contract entered into under this section, the conditions and method of payment to a private lender as a result of losses incurred by the lender on any loan insured under this section.

(f) In entering into any contract to insure a loan under this section, the Secretary shall take steps to assure adequate protection of the financial interests of the Federal Government. The Secretary may:

1. in connection with any foreclosure proceeding, obtain, on behalf of the Federal Government, the property securing a loan insured under this title; and

2. operate or lease such property for such period as may be necessary to protect the interest of the Federal Government and to carry out subsection (g) of this section.

(g) (1) In any case in which a historic property is obtained pursuant to subsection (f) of this section, the Secretary shall attempt to convey such property to any governmental or nongovernmental entity under such conditions as will ensure the property's continued preservation and use; except that if, after a reasonable time, the Secretary, in consultation with the Advisory Council on Historic Preservation, determines that there is no feasible and prudent means to convey such property and to ensure its continued preservation and use, then the Secretary may convey the property at the fair market value of its interest in such property to any entity without restriction.

(2) Any funds obtained by the Secretary in connection with the conveyance of any property pursuant to paragraph (1) shall be covered into the historic preservation fund, in addition to the amounts covered into such fund pursuant to section 108 of this Act and subsection (i) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this Act.

(h) The Secretary may assess appropriate and reasonable fees in connection with insuring loans under this section. Any such fees shall be covered into the Historic Preservation Fund, in addition to the amounts covered into such fund pursuant to section 108 of this Act and subsection (g) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this Act.
(i) Notwithstanding any other provision of law, any loan insured under this section shall be treated as non-Federal funds for the purposes of satisfying any requirement of any other provision of law under which Federal funds to be used for any project or activity are conditioned upon the use of non-Federal funds by the recipient for payment of any portion of the costs of such project or activity.

(j) Effective after the fiscal year 1981 there are authorized to be appropriated, such sums as may be necessary to cover payments incurred pursuant to subsection (e) of this section.

(k) No debt obligation which is made or committed to be made, or which is insured or committed to be insured, by the Secretary under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

Section 105

The beneficiary of assistance under this Act shall keep such records as the Secretary shall prescribe, including records which fully disclose the disposition by the beneficiary of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

Section 106

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.

Section 107

Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.
Section 108

[16 U.S.C. 470h — Establishment of Historic Preservation Fund; authorization for appropriations]

To carry out the provisions of this Act, there is hereby established the Historic Preservation Fund (hereafter referred to as the "fund") in the Treasury of the United States.

There shall be covered into such fund $24,400,000 for fiscal year 1977, $100,000,000 for fiscal year 1978, $100,000,000 for fiscal year 1979, $150,000,000 for fiscal year 1980 and $150,000,000 for each of fiscal years 1981 and $150,000,000 for each of fiscal years 1982 through 2005, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67 Stat. 462, 469) as amended (43 U.S.C. 1338), and/or under section 7433(b) of Title 10, notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this Act and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appropriated for said purposes: Provided, That appropriations made pursuant to this paragraph may be made without fiscal year limitation.

Section 109

[16 U.S.C. 470h-1(a) — Donations to the Secretary]

(a) In furtherance of the purposes of this Act, the Secretary may accept the donation of funds which may be expended by him for projects to acquire, restore, preserve, or recover data from any district, building, structure, site, or object which is listed on the National Register of Historic Places established pursuant to section 101 of this Act, so long as the project is owned by a State, any unit of local government, or any nonprofit entity.

[16 U.S.C. 470h-1(b) — Expenditure of donated funds]

(b) In expending said funds, the Secretary shall give due consideration to the following factors: the national significance of the project; its historical value to the community; the imminence of its destruction or loss; and the expressed intentions of the donor. Funds expended under this subsection shall be made available without regard to the matching requirements established by section 102 of this Act, but the recipient of such funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund established by section 108 of this Act.

[16 U.S.C. 470h-1(c) — Transfer of funds donated for the National Park Service]

(c) The Secretary is hereby authorized to transfer unobligated funds previously donated to the Secretary for purposes of the National Park Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with the provisions of this Act.

Section 110

[16 U.S.C. 470h-2(a) — Federal agencies’ responsibility to preserve and use historic properties]

(a) (1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency in accordance with
Executive Order No. 13006, issued May 21, 1996 (61 Fed. Reg. 26071). Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(g) of this Act, any preservation as may be necessary to carry out this section. [Each Federal agency to establish a preservation program to protect and preserve historic properties in consultation with others]

(2) Each Federal agency shall establish (unless exempted pursuant to Section 214) of this Act, in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure—

(A) that historic properties under the jurisdiction or control of the agency are identified, evaluated, and nominated to the National Register;

(B) that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values in compliance with section 106 of this Act and gives special consideration to the preservation of such values in the case of properties designated as having National significance;

(C) that the preservation of properties not under the jurisdiction or control of the agency, but subject to be potentially affected by agency actions are given full consideration in planning;

(D) that the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector; and

(E) that the agency's procedures for compliance with section 106 of this Act—

(i) are consistent with regulations issued by the Council pursuant to section 211 of this Act;

(ii) provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and

(iii) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3002(c)).

[16 U.S.C. 470h-2(b) — Recordation of historic properties prior to demolition]

(b) Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, an historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101(a) of this Act, in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.
Designation of Federal agency preservation officers]

(c) The head of each Federal agency shall, unless exempted under section 214 of this Act, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this Act. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 101(h) of this Act.

Conduct of agency programs consistent with Act]

(d) Consistent with the agency's mission and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act.

Transfer of surplus Federal historic properties]

(e) The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

Federal undertakings affecting National Historic Landmarks]

(f) Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

Preservation activities as an eligible project cost]

(g) Each Federal agency may include the costs of preservation activities of such agency under this Act as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this Act, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit.

Preservation awards program]

(h) The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts not to exceed $1,000 and provide citations for special achievements to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the President of the United States to any citizen of the United States recommended for such award by the Secretary.
Nothing in this Act shall be construed to require the preparation of an environmental impact
statement where such a statement would not otherwise be required under the National
Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.], and nothing in this Act shall be
construed to provide any exemption from any requirement respecting the preparation of such a
statement under such Act.

Disaster waivers

The Secretary shall promulgate regulations under which the requirements of this section may be
waived in whole or in part in the event of a major natural disaster or an imminent threat to the
national security.

Anticipatory demolition

Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit,
license, or other assistance to an applicant who, with intent to avoid the requirements of section 106
of this Act, has intentionally significantly adversely affected a historic property to which the grant
would relate, or having legal power to prevent it, allowed such significant adverse effect to occur,
unless the agency, after consultation with the Council, determines that circumstances justify
granting such assistance despite the adverse effect created or permitted by the applicant.

Documentation of Federal agency Section 106 decisions

With respect to any undertaking subject to section 106 of this Act which adversely affects any
property included in or eligible for inclusion in the National Register, and for which a Federal
agency has not entered into an agreement pursuant to regulations issued by the Council, the head of
such agency shall document any decision made pursuant to section 106 of this Act. The head of
such agency may not delegate his or her responsibilities pursuant to such section. Where a section
106 of this Act memorandum of agreement has been executed with respect to an undertaking, such
memorandum shall govern the undertaking and all of its parts.

Lease or exchange of Federal historic property

Notwithstanding any other provision of law, any Federal agency after consultation with the Council,
shall, to the extent practicable, establish and implement alternatives for historic properties,
including adaptive use, that are not needed for current or projected agency purposes, and may lease
an historic property owned by the agency to any person or organization, or exchange any property
owned by the agency with comparable historic property, if the agency head determines that the
lease or exchange will adequately insure the preservation of the historic property.

Use of proceeds

The proceeds of any lease under subsection (a) of this section may, notwithstanding any other
provision of law, be retained by the agency entering into such lease and used to defray the costs of
administration, maintenance, repair, and related expenses incurred by the agency with respect to
such property or other properties which are on the National Register which are owned by, or are
under the jurisdiction or control of, such agency. Any surplus proceeds from such leases shall be
deposited into the Treasury of the United States at the end of the second fiscal year following the fiscal year in which such proceeds were received.

[16 U.S.C. 470h-3(c) — Management contracts]

(c) The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Advisory Council on Historic Preservation, enter into contracts for the management of such property. Any such contract shall contain such terms and conditions as the head of such agency deems necessary or appropriate to protect the interests of the United States and insure adequate preservation of historic property.

Section 112

[16 U.S.C. 470h-4(a) — Each Federal agency is to protect historic resources through professionalism of employees and contractors]

(a) Each Federal agency that is responsible for the protection of historic resources, including archaeological resources pursuant to this Act or any other law shall ensure each of the following —

(1) (A) All actions taken by employees or contractors of such agency shall meet professional standards under regulations developed by the Secretary in consultation with the Council, other affected agencies, and the appropriate professional societies of the disciplines involved, specifically archaeology, architecture, conservation, history, landscape architecture, and planning.

(B) Agency personnel or contractors responsible for historic resources shall meet qualification standards established by the Office of Personnel Management in consultation with the Secretary and appropriate professional societies of the disciplines involved. The Office of Personnel Management shall revise qualification standards within 2 years after October 30, 1992, [the date of enactment of the 1992 Amendments to this Act] for the disciplines involved, specifically archaeology, architecture, conservation, curation, history, landscape architecture, and planning. Such standards shall consider the particular skills and expertise needed for the preservation of historic resources and shall be equivalent requirements for the disciplines involved.

[Maintaining permanent databases]

(2) Records and other data, including data produced by historical research and archaeological surveys and excavations are permanently maintained in appropriate data bases and made available to potential users pursuant to such regulations as the Secretary shall promulgate.

[16 U.S.C. 470h-4(b) — Secretary to promulgate guidelines to owners about protecting and preserving historic resources]

(b) In order to promote the preservation of historic resources on properties eligible for listing in the National Register, the Secretary shall, in consultation with the Council, promulgate guidelines to ensure that Federal, State, and tribal historic preservation programs subject to this Act include plans to —

(1) provide information to the owners of properties containing historic (including architectural, curatorial, and archaeological) resources with demonstrated or likely research significance,
about the need for protection of such resources, and the available means of protection;

(2) encourage owners to preserve such resources intact and in place and offer the owners of such resources information on the tax and grant assistance available for the donation of the resources or of a preservation easement of the resources;

[Encourage protection of Native American cultural items and properties]

(3) encourage the protection of Native American cultural items (within the meaning of section 2 (3) and (9) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3001 (3) and (9))) and of properties of religious or cultural importance to Indian tribes, Native Hawaiians, or other Native American groups; and

[Conduct archeological excavations to meet Federal standards, allow access to artifacts for research, consult with Indian tribe or Native Hawaiian organization if related items likely]

(4) encourage owners who are undertaking archaeological excavations to —

(A) conduct excavations and analyses that meet standards for federally-sponsored excavations established by the Secretary;

(B) donate or lend artifacts of research significance to an appropriate research institution;

(C) allow access to artifacts for research purposes; and

(D) prior to excavating or disposing of a Native American cultural item in which an Indian tribe or Native Hawaiian organization may have an interest under section 3(a)(2) (B) or (C) of the Native American Grave Protection and Repatriation Act (25 U.S.C. 3002(a)(2) (B) and (C)), given notice to and consult with such Indian tribe or Native Hawaiian organization.

Section 113

[16 U.S.C. 470h-5(a) — Study to report ways to control illegal trafficking in]

(a) In order to help control illegal interstate and international traffic in antiquities, including archaeological, curatorial, and architectural objects, and historical documents of all kinds, the Secretary shall study and report on the suitability and feasibility of alternatives for controlling illegal interstate and international traffic in antiquities.

[16 U.S.C. 470h-5(b) — Consultation]

(b) In conducting the study described in subsection (a) of this section the Secretary shall consult with the Council and other Federal agencies that conduct, cause to be conducted, or permit archaeological surveys or excavations or that have responsibilities for other kinds of antiquities and with State Historic Preservation Officers, archaeological, architectural, historical, conservation, and curatorial organizations, Indian tribes, Native Hawaiian organizations, and other Native American organizations, international organizations and other interested persons.
[16 U.S.C. 470h-5(c) — Report]

c) Not later than 18 months after October 30, 1992 [the date of enactment of this section], the Secretary shall submit to Congress a report detailing the Secretary's findings and recommendations from the study described in subsection (a) of this section.

[16 U.S.C. 470h-5(d) — Funding authorization]

d) There are authorized to be appropriated not more than $500,000 for the study described in subsection (a) of this section, such sums to remain available until expended.

TITLE II
Section 201

[16 U.S.C. 470i(a) — Advisory Council on Historic Preservation; membership]

(a) There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation which shall be composed of the following members:

(1) a Chairman appointed by the President selected from the general public;

(2) the Secretary of the Interior;

(3) the Architect of the Capitol;

(4) the Secretary of Agriculture and the heads of four other agencies of the United States (other than the Department of the Interior), the activities of which affect historic preservation, designated by the President;

(5) one Governor appointed by the President;

(6) one mayor appointed by the President;

(7) the President of the National Conference of State Historic Preservation Officers;

(8) the Chairman of the National Trust for Historic Preservation;

(9) four experts in the field of historic preservation appointed by the President from the disciplines of architecture, history, archaeology, and other appropriate disciplines;

(10) three at-large members from the general public, appointed by the President; and

(11) one member of an Indian tribe or Native Hawaiian organization who represents the interests of the tribe or organization of which he or she is a member, appointed by the President.

[16 U.S.C. 470i(b) — Designees]

(b) Each member of the Council specified in paragraphs (2) through (8) other than (5) and (6) of subsection (a) of this section may designate another officer of his department, agency, or organization to serve on the Council in his stead, except that, in the case of paragraphs (2) and (4), no such officer other than an Assistant Secretary or an officer having major department-wide or
agency-wide responsibilities may be so designated.

[16 U.S.C. 470i(c) — Term of office]

(c) Each member of the Council appointed under paragraph (1), and under paragraphs (9) through (11) of subsection (a) of this section shall serve for a term of four years from the expiration of his predecessor's term; except that the members first appointed under that paragraph shall serve for terms of one to four years, as designated by the President at the time of appointment, in such manner as to insure that the terms of not more than two of them will expire in any one year. The members appointed under paragraphs (5) and (6) shall serve for the term of their elected office but not in excess of four years. An appointed member may not serve more than two terms. An appointed member whose term has expired shall serve until that member's successor has been appointed.

[16 U.S.C. 470i(d) — Vacancies]

(d) A vacancy in the Council shall not affect its powers, but shall be filled not later than sixty days after such vacancy commences, in the same manner as the original appointment (and for the balance of any unexpired terms). The members of the Advisory Council on Historic Preservation appointed by the President under this Act as in effect on the day before December 12, 1980 [the enactment of the National Historic Preservation Act Amendments of 1980], shall remain in office until all members of the Council, as specified in this section, have been appointed. The members first appointed under this section shall be appointed not later than one hundred and eighty days after December 12, 1980 [the enactment of the National Historic Preservation Act Amendments of 1980].

[16 U.S.C. 470i(e) — Vice Chairman]

(e) The President shall designate a Vice Chairman, from the members appointed under paragraphs (5), (6), (9), or (10). The Vice Chairman may act in place of the Chairman during the absence or disability of the Chairman or when the office is vacant.

[16 U.S.C. 470i(f) — Quorum]

(f) Nine members of the Council shall constitute a quorum.

Section 202

[16 U.S.C. 470j(a) — Duties of Council]

(a) The Council shall —

(1) advise the President and the Congress on matters relating to historic preservation; recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation; and advise on the dissemination of information pertaining to such activities;

(2) encourage, in cooperation with the National Trust for Historic Preservation and appropriate private agencies, public interest and participation in historic preservation;

(3) recommend the conduct of studies in such areas as the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments and the effects of tax policies at all levels of government on historic preservation activities.
preservation;

(4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;

(5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation;

(6) review the policies and programs of Federal agencies and recommend to such agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this Act; and

(7) inform and educate Federal agencies, State and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities.

[16 U.S.C. 470j(b) — Annual and special reports]

(b) The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable. Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out the purposes of this Act.

Section 203

[16 U.S.C. 470k — Information from agencies]

The Council is authorized to secure directly from any department, bureau, agency, board, commission, office, independent establishment or instrumentality of the executive branch of the Federal Government information, suggestions, estimates, and statistics for the purpose of this title of the Act; and each such department, bureau, agency, board, commission, office, independent establishment or instrumentality is authorized to furnish such information, suggestions, estimates, and statistics to the extent permitted by law and within available funds.

Section 204

[16 U.S.C. 470l — Compensation of members]

The members of the Council specified in paragraphs (2), (3), and (4) of section 201(a) shall serve without additional compensation. The other members of the Council shall receive $100 per diem when engaged in the performance of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council.
Section 205

[16 U.S.C. 470m(a) — Executive Director]

(a) There shall be an Executive Director of the Council who shall be appointed in the competitive service by the Chairman with the concurrence of the Council. The Executive Director shall report directly to the Council and perform such functions and duties as the Council may prescribe.

[16 U.S.C. 470m(b) — General Counsel and other attorneys]

(b) The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor. The Executive Director shall appoint such other attorneys as may be necessary to assist the General Counsel, represent the Council in courts of law whenever appropriate, including enforcement of agreements with Federal agencies to which the Council is a party, assist the Department of Justice in handling litigation concerning the Council in courts of law, and perform such other legal duties and functions as the Executive Director and the Council may direct.

[16 U.S.C. 470m(c) — Appointment and compensation of staff]

(c) The Executive Director of the Council may appoint and fix the compensation of such officers and employees in the competitive service as are necessary to perform the functions of the Council at rates not to exceed that now or hereafter prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of title 5 [United States Code]: Provided, however, That the Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed five employees in the competitive service at rates not to exceed that now or hereafter prescribed for the highest rate of grade 17 of the General Schedule under section 5332 of Title 5 [United States Code].

[16 U.S.C. 470m(d) — Appointment and compensation of additional personnel]

(d) The Executive Director shall have power to appoint and fix the compensation of such additional personnel as may be necessary to carry out its duties, without regard to the provisions of the civil service laws and the Classification Act of 1949 [chapter 51 and subchapter III of chapter 53 of Title 5, U.S. Code].

[16 U.S.C. 470m(e) — Expert and consultant services]

(e) The Executive Director of the Council is authorized to procure expert and consultant services in accordance with the provisions of section 3109 of title 5 [United States Code].

[16 U.S.C. 470m(f) — Financial and administrative services]

(f) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the Secretary of the Interior: Provided, That the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 5514(b)) shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative control of funds (31 U.S.C. 1513(d), 1514) shall apply to
appropriations of the Council: *And provided further*, That the Council shall not be required to prescribe such regulations.

[16 U.S.C. 470m(g) — Use of funds, personnel, facilities, and services]

(g) Any Federal agency may provide the Council, with or without reimbursement as may be agreed upon by the Chairman and the agency, with such funds, personnel, facilities, and services under their jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that such funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. Any funds provided to the Council pursuant to this subsection must be expended by the end of the fiscal year following the fiscal year in which the funds are received by the Council. To the extent of available appropriations, the Council may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties and may also receive donations of moneys for such purpose, and the Executive Director is authorized, in his discretion, to accept, hold, use, expend, and administer the same for the purposes of this Act.

Section 206

[16 U.S.C. 470n(a) — International Centre for the Study of the Preservation and Restoration of Cultural Property; authorization]

(a) The participation of the United States as a member of the International Centre for the Study of the Preservation and Restoration of Cultural Property is hereby authorized.

[16 U.S.C. 470n(b) — Members of official delegation]

(b) The Council shall recommend to the Secretary of State, after consultation with the Smithsonian Institution and other public and private organizations concerned with the technical problems of preservation, the members of the official delegation which will participate in the activities of the Centre on behalf of the United States. The Secretary of State shall appoint the members of the official delegation from the persons recommended to him by the Council.

[16 U.S.C. 470n(c) — Authorization for membership payment]

(c) For the purposes of this section there is authorized to be appropriated an amount equal to the assessment for United States membership in the Centre for fiscal years 1979, 1980, 1981, and 1982: *Provided*, That no appropriation is authorized and no payment shall be made to the Centre in excess of 25 per centum of the total annual assessment of such organization. Authorization for payment of such assessment shall begin in fiscal year 1981, but shall include earlier costs.

Section 207

[16 U.S.C. 470o — Transfer of personnel, funds, etc. to the Council]

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, programmed, or available or to be made available by the Department of the Interior in connection with the functions of the Council, as the Director of the Office of Management and Budget shall determine, shall be transferred from the Department to the Council within 60 days of the effective date of this Act [Pub. L. 94-422, September 28, 1976].
Section 208


Any employee in the competitive service of the United States transferred to the Council under the provisions of this section shall retain all rights, benefits, and privileges pertaining thereto held prior to such transfer.

Section 209

[16 U.S.C. 470q — Exemption from Federal Advisory Committee Act]

The Council is exempt from the provisions of the Federal Advisory Committee Act (86 Stat. 770), and the provisions of subchapter II of chapter 5 and chapter 7, of Title 5 [U.S. Code] [the Administrative Procedure Act (80 Stat. 381)] shall govern the operations of the Council.

Section 210

[16 U.S.C. 470r — Direct Submission to the Congress]

No officer or agency of the United States shall have any authority to require the Council to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress. In instances in which the Council voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Council shall include a description of such actions in its legislative recommendations, testimony, or comments on legislation which it transmits to the Congress.

Section 211

[16 U.S.C. 470s — Regulations for Section 106; local government participation]

The Council is authorized to promulgate such rules and regulations as it deems necessary to govern the implementation of section 106 of this Act in its entirety. The Council shall, by regulation, establish such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 106 of this Act which affect such local governments.

Section 212

[16 U.S.C. 470t(a) — Council appropriation authorization]

(a) The Council shall submit its budget annually as a related agency of the Department of the Interior. There are authorized to be appropriated for purposes of this title not to exceed $4,000,000 for each fiscal year 1997 through 2005.

[16 U.S.C. 470t(b) — Concurrent submission of budget to Congress]

(b) Whenever the Council submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the House and Senate Appropriations Committees and the House Committee on Natural Resources and
the Senate Committee on Energy and Natural Resources.

Section 213

[16 U.S.C. 470u — Reports from Secretary at request of Council]

To assist the Council in discharging its responsibilities under this Act, the Secretary at the request of the Chairman, shall provide a report to the Council detailing the significance of any historic property, describing the effects of any proposed undertaking on the affected property, and recommending measures to avoid, minimize, or mitigate adverse effects.

Section 214

[16 U.S.C. 470v - Exemptions for Federal activities from provisions of the Act]

The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the requirements of this Act when such exemption is determined to be consistent with the purposes of this Act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties.

Section 215

[16 U.S.C. 470v-1 — Reimbursement from State and local agencies, etc.]

Subject to applicable conflict of interest laws, the Council may receive reimbursements from State and local agencies and others pursuant to agreements executed in furtherance of the purposes of this Act.

TITLE III
Section 301

[16 U.S.C. 470w — Definitions]

As used in this Act, the term —

(1) "Agency" means agency as such term is defined in section 551 of title 5 [United States Code].

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and, upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau.

(3) "Local government" means a city, county, parish, township, municipality, or borough, or any other general purpose political subdivision of any State.

(4) "Indian tribe" or "tribe" means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act [43 U.S.C. 1602], which is recognized as eligible for the special programs and services provided by the
United States to Indians because of their status as Indians.

(5) "Historic property" or "historic resource" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or resource.

(6) "National Register" or "Register" means the National Register of Historic Places established under section 101 of this Act.

(7) "Undertaking" means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including —

(A) those carried out by or on behalf of the agency;

(B) those carried out with Federal financial assistance;

(C) those requiring a Federal permit license, or approval; and

(D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

(8) "Preservation" or "historic preservation" includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, conservation, and education and training regarding the foregoing activities, or any combination of the foregoing activities.

(9) "Cultural park" means a definable area which is distinguished by historic resources and land related to such resources and which constitutes an interpretive, educational, and recreational resource for the public at large.

(10) "Historic conservation district" means an area which contains

(A) historic properties,

(B) buildings having similar or related architectural characteristics,

(C) cultural cohesiveness, or

(D) any combination of the foregoing.

(11) "Secretary" means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(12) "State Historic Preservation Review Board" means a board, council, commission, or other similar collegial body established as provided in section 101(b)(1)(B) of this Act —

(A) the members of which are appointed by the State Historic Preservation Officer (unless otherwise provided for by State law),

(B) a majority of the members of which are professionals qualified in the following and related disciplines: history, prehistoric and historic archaeology, architectural history, architecture,
(C) which has the authority to —

(i) review National Register nominations and appeals from nominations;

(ii) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;

(iii) provide general advice and guidance to the State Historic Preservation Officer; and

(iv) perform such other duties as may be appropriate.

(13) "Historic preservation review commission" means a board, council, commission, or other similar collegial body which is established by State or local legislation as provided in section 101(c)(1)(B) of this Act, and the members of which are appointed, unless otherwise provided by State or local legislation, by the chief elected official of the jurisdiction concerned from among —

(A) professionals in the disciplines of architecture, history, architectural history, planning, prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation, and landscape architecture, or related disciplines, to the extent such professionals are available in the community concerned, and

(B) such other persons as have demonstrated special interest, experience, or knowledge in history, architecture, or related disciplines and as will provide for an adequate and qualified commission.

(14) "Tribal lands" means —

(A) all lands within the exterior boundaries of any Indian reservation; and

(B) all dependent Indian communities.

(15) "Certified local government" means a local government whose local historic preservation program has been certified pursuant to section 101(c) of this Act.

(16) "Council" means the Advisory Council on Historic Preservation established by section 201 of this Act.

(17) "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(18) "Native Hawaiian organization" means any organization which —

(A) serves and represents the interests of Native Hawaiians;

(B) has as a primary and stated purpose the provision of services to Native Hawaiians; and
(C) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians.

The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and Hui Malama I Na Kupuna O Hawai‘i Nei, an organization incorporated under the laws of the State of Hawaii.

Section 302

[16 U.S.C. 470w-1 — Authority to expend funds for purposes of this Act]

Where appropriate, each Federal agency is authorized to expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this Act, except to the extent appropriations legislation expressly provides otherwise.

Section 303

[16 U.S.C. 470w-2(a) — Donations to Secretary; money and personal property]

(a) The Secretary is authorized to accept donations and bequests of money and personal property for the purposes of this Act and shall hold, use, expend, and administer the same for such purposes.

[16 U.S.C. 470w-2(b) — Donations of less than fee interests in real property]

(b) The Secretary is authorized to accept gifts or donations of less than fee interests in any historic property where the acceptance of such interests will facilitate the conservation or preservation of such properties. Nothing in this section or in any provision of this Act shall be construed to affect or impair any other authority of the Secretary under other provision of law to accept or acquire any property for conservation or preservation or for any other purpose.

Section 304

[16 U.S.C. 470w-3(a) — Confidentiality of the location of sensitive historic resources]

(a) The head of a Federal agency or other public official receiving grant assistance pursuant to this Act, after consultation with the Secretary, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the Secretary and the agency determine that disclosure may

(1) cause a significant invasion of privacy;

(2) risk harm to the historic resources; or

(3) impede the use of a traditional religious site by practitioners.

[16 U.S.C. 470w-3(b) — Access Determination]

(b) When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to subsection (a) of this section, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this Act.
(c) When the information in question has been developed in the course of an agency's compliance with section 106 or 110(f) of this Act, the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b) of this section.

Section 305

[16 U.S.C. 470w-4 — Attorneys' fees]

In any civil action brought in any United States district court by any interested person to enforce the provisions of this Act, if such person substantially prevails in such action, the court may award attorneys' fees, expert witness fees, and other costs of participating in such action, as the court deems reasonable.

Section 306

[16 U.S.C. 470w-5(a) — National Center for the Building Arts]

(a) In order to provide a national center to commemorate and encourage the building arts and to preserve and maintain a nationally significant building which exemplifies the great achievements of the building arts in the United States, the Secretary and the Administrator of the General Services Administration are authorized and directed to enter into a cooperative agreement with the Committee for a National Museum of the Building Arts, Incorporated, a nonprofit corporation organized and existing under the laws of the District of Columbia, or its successor, for the operation of a National Museum for the Building Arts in the Federal Building located in the block bounded by Fourth Street, Fifth Street, F Street, and G Street, Northwest in Washington, District of Columbia. Such museum shall —

(1) collect and disseminate information concerning the building arts, including the establishment of a national reference center for current and historic documents, publications, and research relating to the building arts;

(2) foster educational programs relating to the history, practice and contribution to society of the building arts, including promotion of imaginative educational approaches to enhance understanding and appreciation of all facets of the building arts;

(3) publicly display temporary and permanent exhibits illustrating, interpreting and demonstrating the building arts;

(4) sponsor or conduct research and study into the history of the building arts and their role in shaping our civilization; and

(5) encourage contributions to the building arts.
(b) The cooperative agreement referred to in subsection (a) of this section shall include provisions which

(1) make the site available to the Committee referred to in subsection (a) of this section without charge;

(2) provide, subject to available appropriations, such maintenance, security, information, janitorial and other services as may be necessary to assure the preservation and operation of the site; and

(3) prescribe reasonable terms and conditions by which the Committee can fulfill its responsibilities under this Act.

(c) The Secretary is authorized and directed to provide matching grants-in-aid to the Committee referred to in subsection (a) of this section for its programs related to historic preservation. The Committee shall match such grants-in-aid in a manner and with such funds and services as shall be satisfactory to the Secretary, except that no more than $500,000 may be provided to the Committee in any one fiscal year.

(d) The renovation of the site shall be carried out by the Administrator with the advice of the Secretary. Such renovation shall, as far as practicable —

(1) be commenced immediately,

(2) preserve, enhance, and restore the distinctive and historically authentic architectural character of the site consistent with the needs of a national museum of the building arts and other compatible use, and

(3) retain the availability of the central court of the building, or portions thereof, for appropriate public activities.

(e) The Committee shall submit an annual report to the Secretary and the Administrator concerning its activities under this section and shall provide the Secretary and the Administrator with such other information as the Secretary may, from time to time, deem necessary or advisable.

(f) For purposes of this section, the term "building arts" includes, but shall not be limited to, all practical and scholarly aspects of prehistoric, historic, and contemporary architecture, archaeology, construction, building technology and skills, landscape architecture, preservation and conservation, building and construction, engineering, urban and community design and renewal, city and regional planning, and related professions, skills, trades, and crafts.
Section 307

[16 U.S.C. 470w-6(a) — Effective date of regulations]

(a) No final regulation of the Secretary shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

[16 U.S.C. 470w-6(b) — Congressional disapproval of regulations]

(b) The regulation shall not become effective if, within ninety calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: "That Congress disapproves the regulation promulgated by the Secretary dealing with the matter of_______, which regulation was transmitted to Congress on_______," the blank spaces therein being appropriately filled.

[16 U.S.C. 470w-6(c) — Inaction by Congress]

(c) If at the end of sixty calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within such sixty calendar days, such a committee has reported or been discharged from further consideration of such a resolution, the regulation may go into effect not sooner than ninety calendar days of continuous session of Congress after its promulgation unless disapproved as provided for.

[16 U.S.C. 470w-6(d) — Definitions]

(d) For the purposes of this section—

(1) continuity of session is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of sixty and ninety calendar days of continuous session of Congress.

[16 U.S.C. 470w-6(e) — Effect of Congressional inaction]

(e) Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of such regulation.

Section 308

[16 U.S.C. 470w-7(a) — National historic light station program]

(a) In order to provide a national historic light station program, the Secretary shall —

(1) collect and disseminate information concerning historic light stations, including historic lighthouses and associated structures;

(2) foster educational programs relating to the history, practice, and contribution to society of...
historic light stations;

(3) sponsor or conduct research and study into the history of light stations;

(4) maintain a listing of historic light stations; and

(5) assess the effectiveness of the program established by this section regarding the conveyance of historic light stations.

[16 U.S.C. 470w-7(b) — Conveyance of Historic Light Stations]

(b) (1) Not later than 1 year after the date of the enactment of this section, the Secretary and the Administrator shall establish a process and policies for identifying, and selecting, an eligible entity to which a historic light station could be conveyed for education, park, recreation, cultural, or historic preservation purposes, and to monitor the use of such light station by the eligible entity.

(2) The Secretary shall review all applications for the conveyance of a historic light station, when the agency with administrative jurisdiction over the historic light station has determined the property to be 'excess property' as that term is defined in the Federal Property Administrative Services Act of 1949 (40 U.S.C. 472(e)), and forward to the Administrator a single approved application for the conveyance of the historic light station. When selecting an eligible entity, the Secretary shall consult with the State Historic Preservation Officer of the State in which the historic light station is located.

(3) (A) Except as provided in subparagraph (B), the Administrator shall convey, by quitclaim deed, without consideration, all right, title, and interest of the United States in and to the historic light station, subject to the conditions set forth in subsection (c) after the Secretary's selection of an eligible entity. The conveyance of a historic light station under this section shall not be subject to the provisions of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.) or section 416(d) of the Coast Guard Authorization Act of 1998 (Public Law 105-383).

(B) (i) Historic light stations located within the exterior boundaries of a unit of the National Park System or a refuge within the National Wildlife Refuge System shall be conveyed or sold only with the approval of the Secretary.

(ii) If the Secretary approves the conveyance of a historic light station referenced in this paragraph, such conveyance shall be subject to the conditions set forth in subsection (c) and any other terms or conditions the Secretary considers necessary to protect the resources of the park unit or wildlife refuge.

(iii) If the Secretary approves the sale of a historic light station referenced in this paragraph, such sale shall be subject to the conditions set forth in subparagraphs (A) through (D) and (H) of subsection (c)(1) and subsection (c)(2) and any other terms or conditions the Secretary considers necessary to protect the resources of the park unit or wildlife refuge.

(iv) For those historic light stations referenced in this paragraph, the Secretary is encouraged to enter into cooperative agreements with appropriate eligible entities, as provided in this Act, to the extent such cooperative
agreements are consistent with the Secretary's responsibilities to manage and administer the park unit or wildlife refuge, as appropriate.

[16 U.S.C. 470w-7(c) — Terms of Conveyance]

(c) (1) The conveyance of a historic light station shall be made subject to any conditions, including the reservation of easements and other rights on behalf of the United States, the Administrator considers necessary to ensure that —

(A) the Federal aids to navigation located at the historic light station in operation on the date of conveyance remain the personal property of the United States and continue to be operated and maintained by the United States for as long as needed for navigational purposes;

(B) there is reserved to the United States the right to remove, replace, or install any Federal aid to navigation located at the historic light station as may be necessary for navigational purposes;

(C) the eligible entity to which the historic light station is conveyed under this section shall not interfere or allow interference in any manner with any Federal aid to navigation, nor hinder activities required for the operation and maintenance of any Federal aid to navigation, without the express written permission of the head of the agency responsible for maintaining the Federal aid to navigation;

(D) the eligible entity to which the historic light station is conveyed under this section shall, at its own cost and expense, use and maintain the historic light station in accordance with this Act, the Secretary of the Interior's Standards for the Treatment of Historic Properties, 36 CFR part 68, and other applicable laws, and any proposed changes to the historic light station shall be reviewed and approved by the Secretary in consultation with the State Historic Preservation Officer of the State in which the historic light station is located, for consistency with 36 CFR part 800.5(a)(2)(vii), and the Secretary of the Interior's Standards for Rehabilitation, 36 CFR part 67.7;

(E) the eligible entity to which the historic light station is conveyed under this section shall make the historic light station available for education, park, recreation, cultural or historic preservation purposes for the general public at reasonable times and under reasonable conditions;

(F) the eligible entity to which the historic light station is conveyed shall not sell, convey, assign, exchange, or encumber the historic light station, any part thereof, or any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, including but not limited to any lens or lanterns, unless such sale, conveyance, assignment, exchange or encumbrance is approved by the Secretary;

(G) the eligible entity to which the historic light station is conveyed shall not conduct any commercial activities at the historic light station, any part thereof, or in connection with any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, in any manner, unless such commercial activities are approved by the Secretary; and

(H) the United States shall have the right, at any time, to enter the historic light station conveyed under this section without notice, for purposes of operating, maintaining, and
inspecting any aid to navigation and for the purpose of ensuring compliance with this subsection, to the extent that it is not possible to provide advance notice.

(2) Any eligible entity to which a historic light station is conveyed under this section shall not be required to maintain any Federal aid to navigation associated with a historic light station, except any private aids to navigation permitted under section 83 of title 14, United States Code, to the eligible entity.

(3) In addition to any term or condition established pursuant to this subsection, the conveyance of a historic light station shall include a condition that the historic light station, or any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, including but not limited to any lens or lanterns, at the option of the Administrator, shall revert to the United States and be placed under the administrative control of the Administrator, if—

(A) the historic light station, any part thereof, or any associated historic artifact ceases to be available for education, park, recreation, cultural, or historic preservation purposes for the general public at reasonable times and under reasonable conditions which shall be set forth in the eligible entity's application;

(B) the historic light station or any part thereof ceases to be maintained in a manner that ensures its present or future use as a site for a Federal aid to navigation;

(C) the historic light station, any part thereof, or any associated historic artifact ceases to be maintained in compliance with this Act, the Secretary of the Interior's Standards for the Treatment of Historic Properties, 36 CFR part 68, and other applicable laws;

(D) the eligible entity to which the historic light station is conveyed, sells, conveys, assigns, exchanges, or encumbers the historic light station, any part thereof, or any associated historic artifact, without approval of the Secretary;

(E) the eligible entity to which the historic light station is conveyed, conducts any commercial activities at the historic light station, any part thereof, or in conjunction with any associated historic artifact, without approval of the Secretary; or

(F) At least 30 days before the reversion, the Administrator provides written notice to the owner that the historic light station or any part thereof is needed for national security purposes.

[16 U.S.C. 470w-7(d) — Description of Property]

(d) (1) The Administrator shall prepare the legal description of any historic light station conveyed under this section. The Administrator, in consultation with the Commandant, United States Coast Guard, and the Secretary, may retain all right, title, and interest of the United States in and to any historical artifact, including any lens or lantern, that is associated with the historic light station and located at the light station at the time of conveyance. Wherever possible, such historical artifacts should be used in interpreting that station. In cases where there is no method for preserving lenses and other artifacts and equipment in situ, priority should be given to preservation or museum entities most closely associated with the station, if they meet loan requirements.

(2) Artifacts associated with, but not located at, the historic light station at the time of conveyance
shall remain the personal property of the United States under the administrative control of the Commandant, United States Coast Guard.

(3) All conditions placed with the quitclaim deed of title to the historic light station shall be construed as covenants running with the land.

(4) No submerged lands shall be conveyed under this section.

[16 U.S.C. 470w-7(e) — Definitions]

(e) For purposes of this section:

(1) The term “Administrator” shall mean the Administrator of General Services.

(2) The term “historic light station” includes the light tower, lighthouse, keepers dwelling, garages, storage sheds, oil house, fog signal building, boat house, barn, pumphouse, tramhouse support structures, piers, walkways, underlying and appurtenant land and related real property and improvements associated therewith; provided that the ‘historic light station’ shall be included in or eligible for inclusion in the National Register of Historic Places.

(3) The term “eligible entity” shall mean:

(A) any department or agency of the Federal Government; or

(B) any department or agency of the State in which the historic light station is located, the local government of the community in which the historic light station is located, nonprofit corporation, educational agency, or community development organization that—

(i) has agreed to comply with the conditions set forth in subsection (c) and to have such conditions recorded with the deed of title to the historic light station; and

(ii) is financially able to maintain the historic light station in accordance with the conditions set forth in subsection (c).

(4) The term “Federal aid to navigation” shall mean any device, operated and maintained by the United States, external to a vessel or aircraft, intended to assist a navigator to determine position or safe course, or to warn of dangers or obstructions to navigation, and shall include, but not be limited to, a light, lens, lantern, antenna, sound signal, camera, sensor, electronic navigation equipment, power source, or other associated equipment.

(5) The term “Secretary” means the Secretary of the Interior.

Section 309

[16 U.S.C. 470w-8(a) — Historic Light Station Sales]

(a) In the event no applicants are approved for the conveyance of a historic light station pursuant to section 308, the historic light station shall be offered for sale. Terms of such sales shall be developed by the Administrator of General Services and consistent with the requirements of section 308, subparagraphs (A) through (D) and (H) of subsection (c)(1), and subsection (c)(2).
Conveyance documents shall include all necessary covenants to protect the historical integrity of the historic light station and ensure that any Federal aid to navigation located at the historic light station is operated and maintained by the United States for as long as needed for that purpose.

[16 U.S.C. 470w-8(b) — Net sale proceeds]

(b) Net sale proceeds from the disposal of a historic light station —

(1) located on public domain lands shall be transferred to the National Maritime Heritage Grant Program, established by the National Maritime Heritage Act of 1994 (Public Law 103-451) within the Department of the Interior; and

(2) under the administrative control of the Coast Guard shall be credited to the Coast Guard's Operating Expenses appropriation account, and shall be available for obligation and expenditure for the maintenance of light stations remaining under the administrative control of the Coast Guard, such funds to remain available until expended and shall be available in addition to funds available in the Operating Expense appropriation for this purpose.

There are hereby authorized to be appropriated to the Secretary of the Interior such sums as may be necessary to carry out this Act.

TITLE IV

Section 401

[16 U.S.C. 470x — National initiative to coordinate and promote research, distribute information and provide training about preservation skills and technologies]

The Congress finds and declares that, given the complexity of technical problems encountered in preserving historic properties and the lack of adequate distribution of technical information to preserve such properties, a national initiative to coordinate and promote research, distribute information, and provide training about preservation skills and technologies would be beneficial.

Section 402

[16 U.S.C. 470x-1 — Definitions]

For the purposes of this title —

(1) The term "Board" means the National Preservation Technology and Training Board established pursuant to section 404 of this Act.

(2) The term "Center" means the National Center for Preservation Technology and Training established pursuant to section 403 of this Act.

(3) The term "Secretary" means the Secretary of the Interior.
Section 403

[16 U.S.C. 470x-2(a) — Establish a National Center for Preservation Technology and Training]

(a) There is hereby established within the Department of the Interior a National Center for Preservation Technology and Training. The Center shall be located at Northwestern State University of Louisiana in Natchitoches, Louisiana.

[16 U.S.C. 470x-2(b) — Purposes of Center]

(b) The purposes of the Center shall be to —

(1) develop and distribute preservation and conservation skills and technologies for the identification, evaluation, conservation, and interpretation of prehistoric and historic resources;

(2) develop and facilitate training for Federal, State and local resource preservation professionals, cultural resource managers, maintenance personnel, and others working in the preservation field;

(3) take steps to apply preservation technology benefits from ongoing research by other agencies and institutions;

(4) facilitate the transfer of preservation technology among Federal agencies, State and local governments, universities, international organizations, and the private sector; and

(5) cooperate with related international organizations including, but not limited to the International Council on Monuments and Sites, the International Center for the Study of Preservation and Restoration of Cultural Property, and the International Council on Museums.

[16 U.S.C. 470x-2(c) — Programs]

(c) Such purposes shall be carried out through research, professional training, technical assistance, and programs for public awareness, and through a program of grants established under section 405 of this Act.

[16 U.S.C. 470x-2(d) — Executive Director]

(d) The Center shall be headed by an Executive Director with demonstrated expertise in historic preservation appointed by the Secretary with advice of the Board.

[16 U.S.C. 470x-2(e) — Assistance from Secretary]

(e) The Secretary shall provide the Center assistance in obtaining such personnel, equipment, and facilities as may be needed by the Center to carry out its activities.

Section 404

[16 U.S.C. 470x-3(a) — Establish a Preservation Technology and Training Board]

(a) There is established a Preservation Technology and Training Board.

[16 U.S.C. 470x-3(b) — Duties]
(b) The Board shall —

(1) provide leadership, policy advice, and professional oversight to the Center;

(2) advise the Secretary on priorities and the allocation of grants among the activities of the Center; and

(3) submit an annual report to the President and the Congress.

[16 U.S.C. 470x-3(c) — Membership]

(c) The Board shall be comprised of —

(1) The Secretary, or the Secretary’s designee;

(2) 6 members appointed by the Secretary who shall represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations; and

(3) 6 members appointed by the Secretary on the basis of outstanding professional qualifications who represent major organizations in the fields of archaeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

Section 405

[16 U.S.C. 470x-4(a) — Grants for research, information distribution and skill training]

(a) The Secretary, in consultation with the Board, shall provide preservation technology and training grants to eligible applicants with a demonstrated institutional capability and commitment to the purposes of the Center, in order to ensure an effective and efficient system of research, information distribution and skills training in all the related historic preservation fields.

[16 U.S.C. 470x-4(b) — Grant Requirements]

(b) (1) Grants provided under this section shall be allocated in such a fashion to reflect the diversity of the historic preservation fields and shall be geographically distributed.

(2) No grant recipient may receive more than 10 percent of the grants allocated under this section within any year.

(3) The total administrative costs, direct and indirect, charged for carrying out grants under this section may not exceed 25 percent of the aggregate costs.

[16 U.S.C. 470x-4(c) — Eligible applicants]

(c) Eligible applicants may include Federal and non-Federal laboratories, accredited museums, universities, non-profit organizations; offices, units, and Cooperative Park Study Units of the
National Park System, State Historic Preservation Offices, tribal preservation offices, and Native Hawaiian organizations.

[16 U.S.C. 470x-4(d) — Standards]

(d) All such grants shall be awarded in accordance with accepted professional standards and methods, including peer review of projects.

[16 U.S.C. 470x-4(e) — Authorization of appropriations]

(e) There is authorized to be appropriated to carry out this section such sums as may be necessary.

Section 406

[16 U.S.C. 470x-5(a) — Center may accept grants, donations, and other Federal funds; may enter into contracts and cooperative agreements]

(a) The Center may accept —

(1) grants and donations from private individuals, groups, organizations, corporations, foundations, and other entities; and

(2) transfers of funds from other Federal agencies.

[16 U.S.C. 470x-5(b) — Contracts and cooperative agreements]

(b) Subject to appropriations, the Center may enter into contracts and cooperative agreements with Federal, State, local, and tribal governments, Native Hawaiian organizations, educational institutions, and other public entities to carry out the Center's responsibilities under this title of the Act.

[16 U.S.C. 470x-5(c) — Authorization of appropriations]

(c) There are authorized to be appropriated such sums as may be necessary for the establishment, operation, and maintenance of the Center. Funds for the Center shall be in addition to existing National Park Service programs, centers, and offices.

Section 407

[16 U.S.C. 470x-6 — Improve use of existing NPS centers and regional offices]

In order to improve the use of existing National Park Service resources, the Secretary shall fully utilize and further develop the National Park Service preservation (including conservation) centers and regional offices. The Secretary shall improve the coordination of such centers and offices within the National Park Service, and shall, where appropriate, coordinate their activities with the Center and with other appropriate parties.

[Addendum]

This addendum contains related legislative provisions enacted in the National Historic Preservation Act Amendments of 1980 but that are not part of the National Historic Preservation Act.

Section 401

[16 U.S.C. 470a-1(a) — International activities and World Heritage Convention]

(a) The Secretary of the Interior shall direct and coordinate United States participation in the Convention Concerning the Protection of the World Cultural and Natural Heritage, approved by the Senate on October 26, 1973, in cooperation with the Secretary of State, the Smithsonian Institution, and the Advisory Council on Historic Preservation. Whenever possible, expenditures incurred in carrying out activities in cooperation with other nations and international organizations shall be paid for in such excess currency of the country or area where the expense is incurred as may be available to the United States.

[16 U.S.C. 470a-1(b) — Nominations of properties to World Heritage List]

(b) The Secretary of the Interior shall periodically nominate properties he determines are of international significance to the World Heritage Committee on behalf of the United States. No property may be so nominated unless it has previously been determined to be of national significance. Each such nomination shall include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment (including restrictive covenants, easements, or other forms of protection). Before making any such nomination, the Secretary shall notify the Committee on Natural Resources of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate.

[16 U.S.C. 470a-1(c) — Concurrence of non-Federal property]

(c) No non-Federal property may be nominated by the Secretary of the Interior to the World Heritage Committee for inclusion on the World Heritage List unless the owner of the property concurs in writing to such nomination.

Section 402

[16 U.S.C. 470a-2 — International Federal activities affecting historic properties]

Prior to the approval of any Federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over such undertaking shall take into account the effect of the undertaking on such property for purposes of avoiding or mitigating any adverse effects.
Subpart A -- Purposes and Participants

Sec. 800.1 Purposes.
800.2 Participants in the Section 106 process.

Subpart B -- The Section 106 Process

800.3 Initiation of the section 106 process.
800.4 Identification of historic properties.
800.5 Assessment of adverse effects.
800.6 Resolution of adverse effects.
800.7 Failure to resolve adverse effects.
800.8 Coordination with the National Environmental Policy act.
800.9 Council review of Section 106 compliance.
800.10 Special requirements for protecting National Historic Landmarks.
800.11 Documentation standards.
800.12 Emergency situations.
800.13 Post-review discoveries.

Subpart C -- Program Alternatives

800.14 Federal agency program alternatives.
800.15 Tribal, State and Local Program Alternatives. (Reserved)
800.16 Definitions.

Appendix A -- Criteria for Council involvement in reviewing individual section 106 cases


Subpart A -- Purposes and Participants

§ 800.1 Purposes.
(a) Purposes of the section 106 process. Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

(b) Relation to other provisions of the act. Section 106 is related to other provisions of the act designed to further the national policy of historic preservation. Reference to those provisions are included in this part to identify circumstances where they may affect actions taken to meet section 106 requirements. Such provisions may have their own implementing regulations or guidelines and are not intended to be implemented by the procedures in this part except insofar as they relate to the section 106 process. Guidelines, policies and procedures issued by other agencies, including the Secretary, have been cited in this part for ease of access and are not incorporated by reference.

(c) Timing. The agency official must complete the section 106 process "prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license." This does not prohibit agency official from conducting or authorizing nondestructive project planning activities before completing compliance with section 106, provided that such actions do not restrict the subsequent consideration of alternatives to avoid, minimize or mitigate the undertaking's adverse effects on historic properties. The agency official shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.

§ 800.2 Participants in the Section 106 process.

(a) Agency official. It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The agency official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the agency official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The agency official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

(1) Professional standards. Section 112(a)(1)(A) of the act requires each Federal agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

(2) Local Federal agency. If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) Use of contractors. Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) Consultation. The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation. The Council encourages the agency official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

(b) Council. The Council issues regulations to implement section 106,
provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to agency officials on individual undertakings and programs that affect historic properties.

(1) Council entry into the section 106 process. When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) Council assistance. Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) Consulting parties. The following parties have consultative roles in the section 106 process.

(1) State historic preservation officer. (i) The State historic preservation officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the act, the SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with § 800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to § 800.3(f)(3).

(2) Indian tribes and Native Hawaiian organizations. (i) Consultation on tribal lands.

(A) Tribal historic preservation officer. For a tribe that has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the tribal historic preservation officer (THPO) appointed or designated in accordance with the act is the official representative for the purposes of section 106. The agency official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands.

(B) Tribes that have not assumed SHPO functions. When an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands. Such Indian tribes have the same rights of consultation and concurrence that the SHPOs are given throughout subpart B of this part, except that such consultations shall be in addition to and on the same basis as consultation with the SHPO.

(ii) Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations. Section 101(d)(b)(3) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

(A) The agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

(B) The Federal Government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies or limits the exercise of any such rights.

(C) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes. The agency official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(D) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

(E) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an agency official that specifies how they will carry out responsibilities under this part, including concerns over the confidentiality of information. An agreement may cover all aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The agency official shall
provide a copy of any such agreement to the Council and the appropriate SHPOs.

(F) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act may notify the agency official in writing that it is waiving its rights under § 800.5(c)(1) to execute a memorandum of agreement.

(3) Representatives of local governments. A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.

(4) Applicants for Federal assistance, permits, licenses and other approvals. An applicant for Federal assistance or for a Federal permit, license or other approval is entitled to participate as a consulting party as defined in this part. The agency official may authorize an applicant or group of applicants to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the agency official. The agency official shall notify the SHPO/THPO when an applicant or group of applicants is so authorized. A Federal agency may authorize all applicants in a specific program pursuant to this section by providing notice to all SHPO/THPOs. Federal agencies that provide authorizations to applicants remain responsible for their government to government relationships with Indian tribes.

(5) Additional consulting parties. Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

(d) The public.

(1) Nature of involvement. The views of the public are essential to informed Federal decisionmaking in the section 106 process. 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 on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

(2) Providing notice and information. The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decisionmaking.

(3) Use of agency procedures. The agency official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in part B of this part if they provide adequate opportunities for public involvement consistent with this subpart.

Subpart B-The section 106 Process

§ 800.3 Initiation of the section 106 process.

(a) Establish undertaking. The agency official shall determine whether the proposed Federal action is an undertaking as defined in § 800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(b) No potential to cause effects. If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part.

(c) Program alternatives. If the review of the undertaking is governed by a Federal agency program alternative established under § 800.14 or a programmatic agreement in existence before January 11, 2001, the agency official shall follow the program alternative.

(b) Coordinate with other reviews. The agency official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act and agency-specific legislation, such as section 4(f) of the Department of Transportation Act. Where consistent with the procedures in this subpart, the agency official may use information developed for other reviews under Federal, State or tribal law to meet the requirements of section 106.

(c) Identify the appropriate SHPO and/or THPO. As part of its initial planning, the agency official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The agency official shall also determine whether the undertaking may occur on or affect historic properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The agency official shall then initiate consultation with the appropriate officer or officers.

(1) Tribal assumption of SHPO responsibilities. Where an Indian tribe has assumed the section 106 responsibilities of the SHPO on tribal lands pursuant to section 101(d)(2) of the act, consultation for undertakings occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. Section 101(d)(3)(D)(iii) of the act authorizes owners of properties on tribal lands which are neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe to request the SHPO to participate in the section 106 process in addition to the THPO.

(2) Undertakings involving more than one State. If more than one State is involved in an undertaking, the involved SHPOs may agree to designate a lead SHPO to act on their behalf in the section 106 process, including taking actions that would conclude the section 106 process under this subpart.

(3) Conducting consultation. The agency official should consult with the SHPO/THPO in a manner appropriate to the agency planning process for the undertaking and to the nature of the undertaking and its effects on historic properties.

(4) Failure of the SHPO/THPO to respond. If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the agency official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the section 106 process, the agency official shall continue the consultation without being required to reconsider previous findings or determinations.
(d) Consultation on tribal lands. Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO. If the SHPO has withdrawn from the process, the agency official may complete the section 106 process with the Indian tribe and the Council, as appropriate. An Indian tribe may enter into an agreement with a SHPO or SHPOs specifying the SHPO's participation in the section 106 process for undertakings occurring on or affecting historic properties on tribal lands.

(e) Plan to involve the public. In consultation with the SHPO/THPO, the agency official shall plan for involving the public in the section 106 process. The agency official shall identify the appropriate points for seeking public input and for notifying the public of proposed actions, consistent with §800.2(d).

(f) Identify other consulting parties. In consultation with the SHPO/THPO, the agency official shall identify any other parties entitled to be consulting parties and invite them to participate as such in the section 106 process. The agency official may invite others to participate as consulting parties as the section 108 process moves forward.

(1) Involving local governments and applicants. The agency official shall invite any local governments or applicants that are entitled to be consulting parties under §800.2(c).

(2) Involving Indian tribes and Native Hawaiian organizations. The agency official shall make a reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties. Such Indian tribe or Native Hawaiian organization that requests in writing to be a consulting party shall be one.

(3) Requests to be consulting parties. The agency official shall consider all written requests of individuals and organizations to participate as consulting parties and, in consultation with the SHPO/THPO and any Indian tribe upon whose tribal lands an undertaking occurs or affects historic properties, determine which should be consulting parties.

(g) Expediting consultation. A consultation by the agency official with the SHPO/THPO and other consulting parties may address multiple steps in §§800.3 through 800.6 where the agency official and the SHPO/THPO agree it is appropriate as long as the consulting parties and the public have an adequate opportunity to express their views as provided in §800.2(d).

§800.4 Identification of historic properties.

(a) Determine scope of identification efforts. In consultation with the SHPO/THPO, the agency official shall:

(1) Determine and document the area of potential effects, as defined in §800.16(c);

(2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified;

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties; and

(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to §800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The agency official should address concerns raised about confidentiality pursuant to §800.11(c).

(b) Identify historic properties. Based on the information gathered under paragraph (a) of this section, and in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects.

(1) Level of effort. The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The agency official shall take into account past planning, research, and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. The Secretary's Standards and Guidelines for Identification provide guidance on this subject. The agency official should also consider other applicable professional, State, tribal and local laws, standards and guidelines. The agency official shall take into account any confidentiality concerns raised by Indian tribes or Native Hawaiian organizations during the identification process.

(2) Phased identification and evaluation. Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts. The agency official may also defer final identification and evaluation of historic properties if it is specifically provided for in a memorandum of agreement executed pursuant to §800.6, a programmatic agreement executed pursuant to §800.14(b), or the documents used by an agency official to comply with the National Environmental Policy Act pursuant to §800.8. The process should establish the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the agency official shall proceed with the identification and evaluation of historic properties in accordance with paragraphs (b)(1) and (c) of this section.

(c) Evaluate historic significance.

(1) Apply National Register criteria. In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's Standards and Guidelines for Evaluation, the agency official shall
apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

(2) Determine whether a property is eligible. If the agency official determines any of the National Register criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the agency official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the agency official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property off tribal lands does not agree, it may ask the Council to request the agency official to obtain a determination of eligibility.

(d) Results of identification and evaluation.

(1) No historic properties affected. If the agency official finds that there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in § 800.16(i), the agency official shall provide documentation of this finding, as set forth in § 800.16(i), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking.

(i) If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.

(ii) If the SHPO/THPO objects within 30 days of receipt of an adequately documented finding, the agency official shall either consult with the objecting party to resolve the disagreement, or forward the finding and supporting documentation to the Council and request that the Council review the finding pursuant to paragraphs (d)(1)(i)(A) through (d)(1)(iv)(C) of this section. When an agency official forwards such requests for review to the Council, the agency official shall concurrently notify all consulting parties that such a request has been made and make the request documentation available to the public.

(iii) During the SHPO/THPO 30 day review period, the Council may object to the finding and provide its opinion regarding the finding to the agency official and, if the Council determines the issue warrants it, the head of the agency. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The agency shall then proceed according to paragraphs (d)(1)(iv)(B) and (d)(1)(iv)(C) of this section.

(iv)(A) Upon receipt of the request under paragraph (d)(1)(i) of this section, the Council will have 30 days in which to review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the finding. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. If the Council does not respond within 30 days of receipt of the request, the agency official's responsibilities under section 106 are fulfilled.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion before the agency reaches a final decision on the finding.

(C) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall then prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial agency finding of no historic properties affected, the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

(3) The Council shall retain a record of agency responses to Council opinions on their findings of no historic properties affected. The Council shall make this information available to the public.

(2) Historic properties affected. If the agency official finds that there are historic properties which may be affected by the undertaking, the agency official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, inviting their views on the effects and assess adverse effects, if any, in accordance with § 800.5.

§ 800.5 Assessment of adverse effects.

(a) Apply criteria of adverse effect. In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the agency official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public.

(1) Criteria of adverse effect. An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be further removed in distance or be cumulative.

(2) Examples of adverse effects. Adverse effects include, but are not limited to:

(i) Physical destruction of or damage to all or part of the property;
(ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines;

(iii) Removal of the property from its historic location;

(iv) Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;

(v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;

(vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and

(vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

(3) Phased application of criteria. Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to § 800.4(b)(2).

(b) Finding of no adverse effect. The agency official, in consultation with the SHPO/THPO, may propose a finding of no adverse effect when the undertaking's effects do not meet the criteria of paragraph (a)(1) of this section or the undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines, to avoid adverse effects.

(c) Consulting party review. If the agency official proposes a finding of no adverse effect, the agency official shall notify all consulting parties of the finding and provide them with the documentation specified in § 800.11(e). The SHPO/THPO shall have 30 days from receipt to review the finding.

(1) Agreement with, or no objection to, finding. Unless the Council is reviewing the finding pursuant to paragraph (c)(3) of this section, the agency official may proceed after the close of the 30 day review period if the SHPO/THPO has agreed with the finding or has not provided a response, and no consulting party has objected. The agency official shall then carry out the undertaking in accordance with paragraph (d)(1) of this section.

(2) Disagreement with finding.

(ii) If within the 30 day review period the SHPO/THPO or any consulting party notifies the agency official in writing that it disagrees with the finding and specifies the reasons for the disagreement in the notification, the agency official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraphs (c)(3)(i) and (c)(3)(ii) of this section. The agency official shall include with such request the documentation specified in § 800.11(e). The agency official shall also concurrently notify all consulting parties that such a submission has been made and make the submission documentation available to the public.

(ii) If within the 30 day review period the Council provides the agency official and, if the Council determines the issue warrants a finding pursuant to paragraphs (c)(3)(i) and (c)(3)(ii) of this section. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part.

(3) Council review of findings.

(i) When a finding is submitted to the Council pursuant to paragraph (c)(3)(i) of this section, the Council shall review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with its opinion as to whether the adverse effect criteria have been correctly applied. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The Council will provide its opinion within 15 days of receiving the documented finding from the agency official. The Council at its discretion may extend that time period for 15 days, in which case it shall notify the agency of such extension prior to the end of the initial 15 day period. If the Council does not respond within the applicable time period, the agency official's responsibilities under section 106 are fulfilled.

(ii) (A) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the finding.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial finding of no adverse effect, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

(C) The Council shall retain a record of agency responses to Council opinions on their findings of no adverse effects. The Council shall make this information available to the public.

(d) Results of assessment.

(1) No adverse effect. The agency official shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of § 800.11(c). Implementation of the undertaking in accordance with the finding as documented fulfills the agency official's responsibilities under section 106 and this part. If the agency official will not conduct the undertaking as proposed in the finding, the agency official shall reopen consultation under paragraph (a) of this section.
(2) Adverse effect. If an adverse effect is found, the agency official shall consult further to resolve the adverse effect pursuant to § 800.6.

§ 800.6 Resolution of adverse effects.

(a) Continue consultation. The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties.

(i) The agency official shall notify the Council of the adverse effect finding by providing the documentation specified in § 800.11(e).

(ii) The notice shall invite the Council to participate in the consultation when:

(A) The agency official wants the Council to participate;

(B) The undertaking has an adverse effect upon a National Historic Landmark;

(C) A programmatic agreement under § 800.14(b) will be prepared;

(ii) The SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party may at any time independently request the Council to participate in the consultation.

(iii) The Council shall advise the agency official and all consulting parties whether it will participate within 15 days of receipt of notice or other request. Prior to entering the process, the Council shall provide written notice to the agency official and the consulting parties that its decision to participate meets the criteria set forth in appendix A to this part. The Council shall also advise the head of the agency of its decision to enter the process.

Consultation with Council participation is conducted in accordance with paragraph (b)(2) of this section.

(iv) If the Council does not join the consultation, the agency official shall proceed with consultation in accordance with paragraph (b)(1) of this section.

(b) Apply for participation. In addition to the consulting parties identified under § 800.3(f), the agency official, the SHPO/THPO and the Council, if participating, may agree to invite other individuals or organizations to become consulting parties. The agency official shall invite any individual or organization that will assume a specific role or responsibility in a memorandum of agreement to participate as a consulting party.

(c) Provide documentation. The agency official shall provide to all consulting parties the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects.

(d) Involve the public. The agency official shall make information available to the public, including the documentation specified in § 800.11(e), subject to the confidentiality provisions of § 800.11(c). The agency official shall provide an opportunity for members of the public to express their views on resolving adverse effects of the undertaking. The agency official should use appropriate mechanisms, taking into account the magnitude of the undertaking and the nature of its effects upon historic properties, the likely effects on historic properties, and the relationship of the Federal involvement to the undertaking to ensure the public's views are considered in the consultation. The agency official should also consider the extent of notice and information concerning historic preservation issues afforded the public at earlier steps in the section 106 process to determine the appropriate level of public involvement when resolving adverse effects so that the standards of § 800.2(d) are met.

(e) Restrictions on disclosure of information. Section 304 of the act and other authorities may limit the disclosure of information under paragraphs (a)(3) and (a)(4) of this section. If an Indian tribe or Native Hawaiian organization objects to the disclosure of information or if the agency official believes that there are other reasons to withhold information, the agency official shall comply with § 800.11(c) regarding the disclosure of such information.

(f) Resolve adverse effects.

(i) Resolution without the Council. The agency official shall consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects.

(ii) The agency official may use standard treatments established by the Council under § 800.14(d) as a basis for a memorandum of agreement.

(iii) If the Council declines to join the consultation, the agency official shall follow paragraphs (b)(2) of this section.

(iv) If the agency official and the SHPO/THPO agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement. The agency official must submit a copy of the executed memorandum of agreement, along with the documentation specified in § 800.11(f), to the Council prior to approving the undertaking in order to meet the requirements of section 106 and this subpart.

(v) If the agency official, and the SHPO/THPO fail to agree on the terms of a memorandum of agreement, the agency official shall request the Council to join the consultation and provide the Council with the documentation set forth in § 800.11(g). If the Council decides to join the consultation, the agency official shall proceed in accordance with paragraph (b)(2) of this section. If the Council decides not to join the consultation, the Council will notify the agency and proceed to comment in accordance with § 800.7(c).

(g) Resolution with Council participation. If the Council decides to participate in the consultation, the agency official shall consult with the SHPO/THPO, the Council, and other consulting parties, including Indian tribes and Native Hawaiian organizations under § 800.2(c)(3), to seek ways to avoid, minimize or mitigate the adverse effects. If the agency official, the SHPO/THPO, and the Council agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement.

(h) Memorandum of agreement. A memorandum of agreement executed and implemented pursuant to this section evidences the agency official's compliance with section 106 and this part and shall govern the undertaking and all of its parts. The agency official shall ensure that the undertaking is carried out in accordance with the memorandum of agreement.

(i) Signatories. The signatories have sole authority to execute, amend or terminate the agreement in accordance with this subpart.

(i) The agency official and the SHPO/THPO are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(1) of this section.

(ii) The agency official, the SHPO/THPO, and the Council are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(2) of this section.

(iii) The agency official and the Council are signatories to a
memorandum of agreement executed pursuant to § 800.7(a)(2).

(2) Invited signatories.
(i) The agency official may invite additional parties to be signatories to a memorandum of agreement. Any such party that signs the memorandum of agreement shall have the same rights with regard to seeking amendment or termination of the memorandum of agreement as other signatories.

(ii) The agency official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a memorandum of agreement concerning such properties.

(iii) The agency official should invite any party that assumes a responsibility under a memorandum of agreement to be a signatory.

(iv) The refusal of any party invited to become a signatory to a memorandum of agreement pursuant to paragraph (c)(2) of this section does not invalidate the memorandum of agreement.

(3) Concurrence by others. The agency official may invite all consulting parties to concur in the memorandum of agreement. The signatories may agree to invite others to concur. The refusal of any party invited to concur in the memorandum of agreement does not invalidate the memorandum of agreement.

(a) Reports on implementation. Where the signatories agree it is appropriate, a memorandum of agreement shall include a provision for monitoring and reporting on its implementation.

(b) Duration. A memorandum of agreement shall include provisions for termination and for reconsideration of terms if the undertaking has not been implemented within a specified time.

(c) Discoveries. Where the signatories agree it is appropriate, a memorandum of agreement shall include provisions to deal with the subsequent discovery or identification of additional historic properties affected by the undertaking.

(7) Amendments. The signatories to a memorandum of agreement may amend it. If the Council was not a signatory to the original agreement and the signatories execute an amended agreement, the agency official shall file it with the Council.

(8) Termination. If any signatory determines that the terms of a memorandum of agreement cannot be or are not being carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The agency official shall either execute a memorandum of agreement with signatories under paragraph (c)(1) of this section or request the comments of the Council under § 800.7(a).

(9) Copies. The agency official shall provide each consulting party with a copy of any memorandum of agreement executed pursuant to this subpart.

§ 800.7 Failure to resolve adverse effects.

(a) Termination of consultation. After consulting to resolve adverse effects pursuant to § 800.6(b)(2), the agency official, the SHPOs/HAPOs or the Council may determine that further consultation will not be productive and terminate consultation. Any party that terminates consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

(1) If the agency official terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities shall request that the Council comment pursuant to paragraph (c) of this section and shall notify all consulting parties of the request.

(2) If the SHPO or HAPO terminates consultation, the agency official and the Council may execute a memorandum of agreement without the SHPO's involvement.

(3) If a HAPO terminates consultation regarding an undertaking occurring on or affecting historic properties on its tribal lands, the Council shall comment pursuant to paragraph (c) of this section.

(4) If the Council terminates consultation, the Council shall notify the agency official, the agency's Federal preservation officer and all consulting parties of the termination and comment under paragraph (c) of this section. The Council may consult with the agency's Federal preservation officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

(b) Comments without termination. The Council may determine that it is appropriate to provide additional advisory comments upon an undertaking for which a memorandum of agreement will be executed. The Council shall provide them to the agency official when it executes the memorandum of agreement.

(c) Comments by the Council.

(1) Preparation. The Council shall provide an opportunity for the agency official, all consulting parties, and the public to provide their views within the time frame for developing its comments. Upon request of the Council, the agency official shall provide additional existing information concerning the undertaking and assist the Council in arranging an on-site inspection and an opportunity for public participation.

(2) Timing. The Council shall transmit its comments within 45 days of receipt of a request under paragraph (a)(1) or (a)(3) of this section or § 800.6(b)(3), or termination by the Council under § 800.6(b)(3)(v) or paragraph (a)(4) of this section, unless otherwise agreed to by the agency official.

(3) Transmittal. The Council shall provide its comments to the head of the agency requesting comment with copies to the agency official, the agency's Federal preservation officer, all consulting parties, and others as appropriate.

(4) Responses to Council comments. The head of the agency shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(l) of the act directs that the head of the agency shall document this decision and may not delegate his or her responsibilities pursuant to section 106. Documenting the agency head's decision shall include:

(i) Preparing a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's comments and providing it to the Council prior to approval of the undertaking;

(ii) Providing a copy of the summary to all consulting parties; and

(iii) Notifying the public and making the record available for public inspection.

§ 800.8 Coordination With the National Environmental Policy Act.

(a) General principles.

(1) Early coordination. Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan...
their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a “major Federal action significantly affecting the quality of the human environment,” and therefore requires preparation of an environmental impact statement (EIS) under NEPA, should include consideration of the undertaking’s likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA.

(2) Consulting party roles.
SHPO/THPOs, Indian tribes and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on historic properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration.

(3) Inclusion of historic preservation issues. Agency officials should ensure that preparation of an environmental assessment (EA) and finding of no significant impact (FONSI) or an EIS and record of decision (ROD) includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.

(b) Actions categorically excluded under NEPA. If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the agency official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to §800.3(a). If so, the agency official shall proceed with section 106 review in accordance with the procedures in this subpart.

(c) Use of the NEPA process for section 106 purposes. An agency official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in §§800.3 through 800.5 if the agency official has notified in advance the SHPO/THPO and the Council that it intends to do so and the following standards are met:

(1) Standards for developing environmental documents to comply with Section 106. During preparation of the EA or draft EIS (DEIS) the agency official shall:

(i) Identify consulting parties either pursuant to §800.3(f) or through the NEPA scoping process with results consistent with §800.3(f);

(ii) Identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of §§800.4 through 800.5, provided that the scope and timing of these steps may be phased to reflect the agency official's consideration of project alternatives in the NEPA process and the effort is commensurate with the assessment of other environmental factors;

(iii) Consult regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents;

(iv) Involve the public in accordance with the agency's published NEPA procedures; and

(v) Develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.

(2) Review of environmental documents.

(i) The agency official shall submit the EA, DEIS or EIS to the SHPO/THPO, Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, and other consulting parties prior to or when making the document available for public comment.

(ii) If the document being prepared is a DEIS or EIS, the agency official shall also submit it to the Council.

(iii) Prior to or within the time allowed for public comment on the document, a SHPO/THPO, an Indian tribe or Native Hawaiian organization, another consulting party or the Council may object to the agency official that preparation of the EA, DEIS or EIS has not met the standards set forth in paragraph (c)(1) of this section or that the substantive resolution of the effects on historic properties proposed in an EA, DEIS or EIS is inadequate. If the agency official receives such an objection, the agency official shall refer the matter to the Council.

(3) Resolution of objections. Within 30 days of the agency official's referral of an objection under paragraph (c)(2)(i) of this section, the Council shall review the objection and notify the agency as to its opinion on the objection.

(i) If the Council agrees with the objection:

(A) The Council shall provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the objection. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the issue of the objection.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council. The head of the agency may delegate his or her duties under this paragraph to the agency's senior Policy Official. If the agency official's initial decision regarding the matter that is the subject of the objection will be revised, the agency official shall proceed in accordance with the revised decision. If the final decision of the agency is to affirm the initial agency decision, once the summary of the final decision has been sent to the Council, the agency official shall continue its compliance with this section.

(ii) If the Council disagrees with the objection, the Council shall so notify the agency official, in which case the agency official shall continue its compliance with this section.

(iii) If the Council fails to respond to the objection within the 30 day period, the agency official shall continue its compliance with this section.

(4) Approval of the undertaking. If the agency official has found, during the preparation of an EA or EIS that the effects of an undertaking on historic properties are adverse, the agency official shall develop measures in the EA, DEIS, or EIS to avoid, minimize, or mitigate such effects in accordance with paragraph (c)(3)(v) of this section. The agency official's responsibilities under section 106 and the procedures in this
shall transmit the determination to the
foreclosure has occurred, the Council
preservation officer and allow
for the agency official to provide
official and the agency's Federal
The Council shall notify the agency
Council may review a case to determine
complete the requirements of section
Where an agency official has failed to
undertaking may be foreclosed. The
official shall consider the views of the
Council may provide to the agency
compliance with the
agency's Federal
To paragraph (c) of this section are
notify the Council and all consulting
parties that supplemental
evironmental documents will be
prepared in compliance with NEPA or
the procedures in §§ 800.3 through
800.8 will be followed as necessary.

§ 800.9 Council review of section 106 compliance.

(a) Assessment of agency official compliance for individual undertakings. The Council may provide to the agency official its advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the agency official's compliance with the procedures under this part. The Council may provide such advice at any time at the request of any individual, agency or organization or on its own initiative. The agency official shall consider the views of the Council in reaching a decision on the matter in question.

(b) Agency foreclosure of the Council's opportunity to comment. Where an agency official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the agency official and the agency's Federal preservation officer and allow 30 days for the agency official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the
agency official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon historic properties.

(c) Intentional adverse effects by applicants.

(1) Agency responsibility. Section 110(k) of the act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the
Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to section 110 of the act governs its implementation.

(2) Consultation with the Council. When an agency official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the agency official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained from the applicant, SHPO/THPO, an Indian tribe if the undertaking occurs on or affects historic properties on tribal lands, and other parties known to be interested in the undertaking.

(i) Within thirty days of receiving the agency official's notification, unless otherwise agreed to by the agency official, the Council shall provide the agency official with its opinion as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects.

(ii) The agency official shall consider the Council's opinion in making a decision on whether to grant assistance to the applicant, and shall notify the Council, the SHPO/THPO, and other parties known to be interested in the undertaking prior to granting the assistance.

(3) Compliance with Section 106. If an agency official, after consulting with the Council, determines to grant the assistance, the agency official shall comply with §§ 800.3 through 800.6 to take into account the effects of the undertaking on any historic properties.

(d) Evaluation of Section 106 operations. The Council may evaluate the operation of the section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the act.

(1) Information from participants. Section 233 of the act authorizes the Council to obtain information from Federal agencies necessary to conduct evaluation of the section 106 process. The agency official shall make documentation of agency policies, operating procedures and actions taken to comply with section 106 available to the Council upon request. The Council may request available information and documentation from other participants in the section 106 process.

(2) Improving the operation of section 106. Based upon any evaluation of the section 106 process, the Council may make recommendations to participants, the heads of Federal agencies, and the Secretary of actions to improve the efficiency and effectiveness of the process. Where the Council determines that an agency official or a SHPO/THPO has failed to properly carry out the responsibilities assigned under the process in this part, the Council may participate in individual case reviews conducted under such process in addition to the SHPO/THPO for such period that it determines is necessary to improve performance or correct deficiencies. If the Council finds a pattern of failure by a Federal agency in carrying out its responsibilities under section 106, the Council may review the policies and programs of the agency related to historic preservation pursuant to section 202(a)(6) of the act and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs with section 106.

§ 800.10 Special requirements for protecting National Historic Landmarks.

(a) Statutory requirement. Section 110(f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When
commenting on such undertakings, the Council shall use the process set forth in §§ 800.6 through 800.7 and give special consideration to protecting National Historic Landmarks as specified in this section.

(b) Resolution of adverse effects. The agency official shall request the Council to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under § 800.8.

(c) Involvement of the Secretary. The agency official shall notify the Secretary of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the act to assist in the consultation.

(d) Report of outcome. When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any memorandum of agreement to which it is a signatory, to the Secretary and the head of the agency responsible for the undertaking.

§ 800.11 Documentation standards.

(a) Adequacy of documentation. The agency official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. The agency official shall provide such documentation to the extent permitted by law and within available funds. When an agency official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of historic properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines that the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the agency official and specify the information needed to meet the standard. At the request of the agency official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the agency official and the consulting parties.

(b) Format. The agency official may use documentation prepared to comply with other laws to fulfill the requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) Confidentiality. (1) Authority to withhold information. Section 304 of the act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act.

(2) Consultation with the Council. When the information in question has been developed in the course of an agency’s compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of the SHPO/THPO, Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) Other authorities affecting confidentiality. Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the section 106 process and may authorize the agency official to protect the privacy of non-governmental applicants.

(d) Finding of no historic properties affected. Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;

(2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to § 800.4(b); and

(3) The basis for determining that no historic properties are present or affected.

(e) Finding of no adverse effect or adverse effect. Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the steps taken to identify historic properties;

(3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;

(4) A description of the undertaking’s effects on historic properties;

(5) An explanation of why the consulted adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

(6) Copies or summaries of any views provided by consulting parties and the public.

(1) Memorandum of agreement. When a memorandum of agreement is filed with the Council, the documentation shall include, any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking’s adverse effects and a summary of the views of consulting parties and the public.

(2) Requests for comment without a memorandum of agreement. Documentation shall include:

(1) A description and evaluation of any alternatives or mitigation measures that the agency official proposes to resolve the undertaking’s adverse effects;

(2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) Copies or summaries of any views submitted to the agency official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(4) Any substantive revisions or additions to the documentation provided the Council pursuant to § 800.6(a)(1).

§ 800.12 Emergency situations.
(a) Agency procedures. The agency official, in consultation with the appropriate SHPO/THPO, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of §§ 800.3 through 800.6.

(b) Alternatives to agency procedures. In the event an agency official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to paragraph (a) of this section, the agency official may comply with section 106 by:

(1) Following a programmatic agreement developed pursuant to § 800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be discovered during the implementation of an undertaking, and the agency official has not developed pursuant to paragraph (a)(1) of this section, the agency official shall include in any finding of no adverse effect or memorandum of agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the agency official’s responsibilities under section 106 and this part.

(c) Local governments responsible for section 106 compliance. When a local government official serves as the agency official for section 106 compliance, paragraphs (a) and (b) of this section also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the agency official shall comply with §§ 800.3 through 800.6.

(d) Applicability. This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority.

An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

§ 800.13 Post-review discoveries.

(a) Planning for subsequent discoveries.

(1) Using a programmatic agreement. An agency official may develop a programmatic agreement pursuant to § 800.14(b) to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking.

(2) Using agreement documents. When the agency official's identification efforts in accordance with § 600.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no programmatic agreement has been developed pursuant to paragraph (a)(1) of this section, the agency official shall include in any finding of no adverse effect or memorandum of agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the agency official's responsibilities under section 106 and this part.

(b) Discoveries without prior planning. If historic properties are discovered or unanticipated effects on historic properties found after the agency official has completed the section 106 process without establishing a programmatic agreement or implementing a programmatic agreement, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the agency official has not approved the undertaking or if construction has commenced, consult to resolve adverse effects pursuant to § 800.6; or

(2) If the agency official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archaeological data, the agency official may comply with the Archaelogical and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official’s assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects.

The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification. The agency official shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) Eligibility of properties. The agency official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of section 106. The agency official shall specify the National Register criteria used to assume the property’s eligibility so that information can be used in the resolution of adverse effects.

(d) Discoveries on tribal lands. If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the agency official has completed the section 106 process without establishing a programmatic agreement or implementing a programmatic agreement, the agency official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

Subpart C-Program Alternatives

§ 800.14 Federal agency program alternatives.
(a) Alternate procedures. An agency official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the act.

(1) Development of procedures. The agency official shall consult with the Council, the National Conference of State Historic Preservation Officers or individual SHPO/THPOs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternate procedures, publish notice of the availability of proposed alternate procedures in the Federal Register and take other appropriate steps to seek public input during the development of alternate procedures.

(2) Council review. The agency official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, it shall notify the agency official and the agency official may adopt them as final alternate procedures.

(3) Notice. The agency official shall notify the parties with which it has consulted and publish notice of final alternate procedures in the Federal Register.

(4) Legal effect. Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) Programmatic agreements. The Council and the agency official may negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) Use of programmatic agreements. A programmatic agreement may be used:

(i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decisionmaking responsibilities;

(iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) Developing programmatic agreements for agency programs.

(i) The consultation will involve, as appropriate, SHPO/THPO, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the programmatic agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the agency official shall also follow paragraph (f) of this section.

(ii) Public Participation. The agency official shall arrange for public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The agency official shall consider the nature of the program and its likely effects on historic properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) Effect. The programmatic agreement shall take effect when executed by the Council, the agency official and the appropriate SHPO/THPO when the programmatic agreement concerns a specific region or the president of NCSHPO when NCSHPO has participated in the consultation. A programmatic agreement shall take effect on tribal lands only when the THPO, Indian tribe or a designated representative of the tribe is a signatory to the agreement. Compliance with the procedures established by an approved programmatic agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until it expires or is terminated by the agency, the president of NCSHPO, when a signatory, or the Council. Termination by an individual SHPO/THPO shall only terminate the application of a regional programmatic agreement within the jurisdiction of the SHPO/THPO. If a THPO assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the act and the SHPO is signatory to a programmatic agreement, the THPO assumes the role of a signatory, including the right to terminate a regional programmatic agreement on lands under the jurisdiction of the tribe.

(iv) Notice. The agency official shall notify the parties with which it has consulted that a programmatic agreement has been executed under paragraph (b) of this section, provide appropriate public notice before it takes effect, and make any internal agency procedures implementing the agreement readily available to the Council, SHPO/THPOs, and the public.

(3) Developing programmatic agreements for complex or multiple undertakings. Consultation to develop a programmatic agreement for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow § 800.8. If consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the agency official shall comply with the provisions of subpart B of this part for each individual undertaking.

(4) Prototype programmatic agreements. The Council may designate an agreement document as a prototype programmatic agreement that may be used for the same type of program or undertaking in more than one case or area. When an agency official uses such a prototype programmatic agreement, the agency official may develop and execute the agreement with the appropriate SHPO/THPO and the agreement shall become final without need for Council participation in consultation or Council signature.

(c) Exempted categories.

(1) Criteria for establishing. The Council or an agency official may propose a program or category of undertakings that may be exempted
The likelihood of impairment of historic properties in accordance with section 214 of the act.

(6) Legal consequences. Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) Termination. The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) Notice. The proposal of the exemption shall publish notice of any approved exemption in the Federal Register.

(d) Standard treatments. (1) Establishment. The Council, on its own initiative or at the request of a party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the Federal Register.

(2) Public participation. The Council shall require any undertaking that falls within an approved exemption to conduct public participation appropriate to the subject matter and the scope of the treatment and consistent with subpart A of this part. The agency official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) Consultation with SHPOs/THPOs. The Council shall notify and consider the views of SHPOs/THPOs on the proposed program comment.

(4) Consultation with Indian tribes and Native Hawaiian organizations. If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) Council action. Unless the Council requests additional documentation, notifies the agency official that it will decline to comment, or obtains the consent of the agency official to extend the period for providing comment, the Council shall comment to the agency official within 45 days of the request.

(1) If the Council comments, the agency official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the Federal Register of the Council’s comments and steps the agency will take to ensure that effects to historic properties are taken into account.

(2) The proponent of the exemption shall arrange for public participation appropriate to the subject matter and the scope of the treatment and consistent with subpart A of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(f) Appropriate to the subject matter and the scope of the treatment and consistent with subpart A of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) Termination. The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) Notice. The proposal of the exemption shall publish notice of any approved exemption in the Federal Register.

(d) Standard treatments. (1) Establishment. The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the Federal Register.

(2) Public participation. The Council shall require any undertaking that falls within an approved exemption to conduct public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part. The Council shall consider the nature of the standard treatment and its likely effects on historic properties and the individuals, organizations and entities likely to be interested. Where an agency official has proposed a standard treatment, the Council may request the agency official to arrange for public involvement.

(3) Consultation with SHPOs/THPOs. The Council shall notify and consider the views of SHPOs/THPOs on the proposed standard treatment.

(4) Consultation with Indian tribes and Native Hawaiian organizations. If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) Termination. The Council may terminate a standard treatment by publication of a notice in the Federal Register 30 days before the termination takes effect.

(e) Program comments. An agency official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under §§800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) Agency request. The agency official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the agency official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) Public participation. The agency official shall arrange for public participation appropriate to the subject matter and the scope of the category and in accordance with the standards in subpart A of this part. The proponent of the exemption shall notify and consider the views of the SHPOs/THPOs.

(3) Consultation with SHPOs/THPOs. The proponent of the exemption shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(4) Consultation with Indian tribes and Native Hawaiian organizations. If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) Council review of proposed exemptions. The Council shall review an exemption proposal that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the relevant agency official and SHPOs/THPOs of the decision. The decision shall be based on the consistency of the exemption with the purposes of the act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties.
(ii) If the Council declines to comment, the agency official shall continue to comply with the requirements of §§ 800.3 through 800.8 for the individual undertakings.

(5) Withdrawal of comment. If the Council determines that the consideration of historic properties is not being carried out in a manner consistent with the program comment, the Council may withdraw the comment and the agency official shall comply with the requirements of §§ 800.3 through 800.8 for the individual undertakings.

(1) Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives. Whenever an agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the agency official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) Identifying affected Indian tribes and Native Hawaiian organizations. If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the agency official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a Native Hawaiian organization which are located off tribal lands, the agency official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them. When a proposed program alternative has nationwide applicability, the agency official shall identify an appropriate government-to-government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda and applicable provisions of law.

(2) Results of consultation. The agency official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The agency official and the Council shall take those views into account in reaching a final decision on the proposed program alternative.

§ 800.15 Tribal, State, and local program alternatives. (Reserved)

§ 800.16 Definitions.


(b) Agency means agency as defined in § U.S.C. 551.

(c) Approval of the expenditure of funds means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) 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.

(e) Comment means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) Consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

(g) Council means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(h) Day or days means calendar days.

(i) Effect means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

(j) Foreclosure means an action taken by an agency official that effectively precludes the Council from providing comments which the agency official can meaningfully consider prior to the approval of the undertaking.

(k) Head of the agency means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local or tribal government has assumed or has been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l) Historic property means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

(2) The term eligible for inclusion in the National Register includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

(m) Indian tribe means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation or village corporation, as these terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(n) Local government means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(o) Memorandum of agreement means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(p) National Historic Landmark means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(q) National Register means the National Register of Historic Places maintained by the Secretary of the Interior.

(r) National Register criteria means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s) Native Hawaiian organization means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of
Appendix A to Part 800 — Criteria for Council Involvement in Reviewing Individual section 106 Cases

(a) Introduction. This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

(b) General policy. The Council may choose to exercise its authorities under the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

(c) Specific criteria. The Council is likely to enter the section 106 process at the steps specified in the regulations in this part when an undertaking:

1. Has substantial impacts on important historic properties. This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of historic properties, such as impacts to multiple properties within a historic district.

2. Presents important questions of policy or interpretation. This may include questions about how the Council’s regulations are being applied or interpreted, including possible foreclosure or anticipated demolition situations; situations where the outcome will set a precedent affecting Council policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

3. Has the potential for presenting procedural problems. This may include cases with substantial public controversy that is related to historic preservation issues; with disputes among or about consulting parties which the Council’s involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to § 800.9(d)(2).

4. Presents issues of concern to Indian tribes or Native Hawaiian organizations. This may include cases where there have been concerns raised about the identification of, evaluation of, or assessment of effects on historic properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other authorities, such as the Native American Graves Protection and Repatriation Act.
PROTECTING HISTORIC PROPERTIES
A CITIZEN'S GUIDE TO
SECTION 106 REVIEW
CHAIRMAN'S MESSAGE

In 1966, the Federal Government created a process to ensure that American citizens would always have the opportunity to learn about and influence Government activities that could affect their communities' historic resources. The Advisory Council on Historic Preservation is pleased to provide this Citizen's Guide to inform Americans how to use this process to protect their heritage and the places that embody our country's rich and varied history.

JOHN L. NAU, III, CHAIRMAN
Advisory Council on Historic Preservation
Washington, DC, 2002

ABOUT THE ACHP

The mission of the Advisory Council on Historic Preservation (ACHP) is to promote the preservation, enhancement, and productive use of our Nation's historic resources, and advise the President and Congress on national historic preservation policy.

An independent Federal agency, the Advisory Council on Historic Preservation promotes historic preservation nationally by providing a forum for influencing Federal activities, programs, and policies that impact historic properties. It also advises the President and Congress about historic preservation matters, advocates preservation policy, protects historic properties, and educates stakeholders and the public.

John L. Nau, III, of Houston, Texas, is Chairman of the 20-member Council, which is served by a professional staff with offices in Washington, DC, and Colorado. For more information about the ACHP, contact:

Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Washington, DC 20004
Phone: (202) 606-8503
Web site: www.achp.gov
Proud of your heritage? Value the things that reflect your community’s history? You should know about Section 106 review, an important tool you can use to influence Federal decisions and protect historic properties. By law, you have a voice when Federal actions will affect properties that qualify for the National Register of Historic Places, the Nation’s official list of historic properties.

This guide from the Advisory Council on Historic Preservation (ACHP), the Federal agency charged with historic preservation leadership within the Federal Government, will help you make your voice heard.

Each year, the Federal Government is involved in a variety of projects that impact historic properties. For example, the Federal Highway Administration works with States on road improvements, the Department of Housing and Urban Development grants funds to cities to rebuild communities, and the General Services Administration builds and leases Federal office space.

Agencies like the Forest Service, the National Park Service, the Bureau of Land Management, the Department of Veterans Affairs, and the Defense agencies make decisions daily about the management of Federal buildings, parks, forests, and lands.

Less obvious Federal actions can also have repercussions on historic properties. A Corps of Engineers permit to build a boat dock or a housing development that affects wetlands may also impact fragile archeological sites. Likewise, a Federal Communications Commission license for cellular tower construction might compromise rural landscapes or properties valued by Indian tribes for traditional religious and cultural practices.

These and many other Federal actions can harm historic properties. Section 106 review is your opportunity to alert the Federal Government to the historic properties you value and to influence decisions about the Federal projects that affect them.
WHAT IS SECTION 106 REVIEW?

In the National Historic Preservation Act (NHPA), Congress established a comprehensive program to preserve the historical and cultural foundations of the Nation as a living part of community life. Section 106 of NHPA is crucial to that program, because it requires consideration of historic preservation in the multitude of Federal actions that take place nationwide.

Section 106 review encourages, but does not mandate, preservation. Sometimes there is no way for a needed project to proceed without harming historic properties. Section 106 review does, however, ensure that preservation values are factored into Federal agency planning and decisions. Because of Section 106, Federal agencies must assume responsibility for the consequences of their actions on historic properties and be publicly accountable for their decisions.

REGULATIONS

Regulations issued by the ACHP guide Section 106 review, specifying actions Federal agencies must take to meet their legal obligations. The regulations are published in the Code of Federal Regulations at 36 CFR Part 800, “Protecting Historic Properties,” and can be found on the ACHP’s Web site at www.achp.gov/regs.html.

Federal agencies are responsible for initiating Section 106 review, most of which takes place between the agency and State and tribal officials. Appointed by the governor, the State Historic Preservation Officer (SHPO) coordinates the State’s historic preservation program and consults with agencies during Section 106 review.

Agencies also consult with officials of federally recognized Indian tribes (herein, “tribe”) when tribal lands or historic properties of significance to such tribes are involved. Some tribes have officially designated Tribal Historic Preservation Officers (THPOs), while others designate representatives to consult with agencies as needed. Contact information appears on the final pages of this guide.

To successfully complete Section 106 review, Federal agencies must:

- determine if Section 106 of NHPA applies to a given project and, if so, initiate the review;
- gather information to decide which properties in the project area are listed in or eligible for the National Register of Historic Places;
- determine how historic properties might be affected;
- explore alternatives to avoid or reduce harm to historic properties; and
- reach agreement with the SHPO/tribe (and the ACHP in some cases) on measures to deal with any adverse effects or obtain advisory comments from the ACHP which are sent to the head of the agency.
The National Register of Historic Places

The National Register of Historic Places is the Nation's official list of properties recognized for their significance in American history, architecture, archeology, engineering, and culture. It is administered by the National Park Service, which is part of the Department of the Interior. National Register properties include districts, sites, buildings, structures, and objects. They can be significant to a local community, a State, an Indian tribe, or the Nation as a whole.

In order to be considered during Section 106 review, a property must either be already listed in the National Register or be eligible for listing. A property is considered eligible when it meets specific criteria established by the National Park Service.

During Section 106 review, the Federal agency evaluates properties against those criteria and seeks the consensus of the SHPO/tribe regarding eligibility. (For more information, visit the National Register Web site at www.cr.nps.gov/nr.)

What Is an Adverse Effect?

In Section 106 review, a project is considered to adversely affect a historic property if it may alter the characteristics that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property. Integrity is the ability of a property to convey its significance, based on its location, design, setting, materials, workmanship, feeling, and association.

Adverse effects can be direct or indirect. They include reasonably foreseeable impacts that may occur later in time, be farther removed in distance, or be cumulative. Typical examples of adverse effects are:

- Physical destruction or damage
- Alteration inconsistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (see www2.cr.nps.gov/tps/secstan1.htm for more information)
- Relocation of the property
- Change in the character of the property's use or setting
- Introduction of incompatible visual, atmospheric, or audible elements
- Neglect and deterioration
- Transfer, lease, or sale out of Federal control without adequate preservation restrictions

When historic properties will be harmed, Section 106 review usually ends with a legally binding agreement that establishes how the Federal agency will address the adverse effects. In the few cases where this does not occur, and the ACHP issues advisory comments, the head of the Federal agency must consider the comments in making a final decision.

The point of Section 106 review is not to stop projects. It is to ensure that Federal agencies fully consider historic preservation issues and the views of the public during project planning.
DETERMINING FEDERAL INVOLVEMENT

Citizen participation in the Section 106 process balances preservation with ongoing use of historic properties, as demonstrated at the Makua Military Reservation in Hawaii. Rich in archeological resources, the site is used by the U.S. Army for live ammunition fire training.

If you are concerned about a proposed project and wondering whether Section 106 applies, you must first determine whether the Federal Government is involved. Will a Federal agency fund or carry out the project? Is a Federal permit, license, or approval needed? Section 106 applies only if a Federal agency is taking an action, so confirming Federal involvement is key.

Is There Federal Involvement?

Consider the possibilities:

- Is a federally owned or federally controlled property involved, such as a military base, park, forest, office building, post office, or courthouse? Is the agency proposing a project on its land, or would it have to provide a right-of-way or other approval to a private company for a project such as a pipeline or mine?

- Is the project receiving Federal funds, grants, or loans? If it is a transportation project, frequent sources of funds are the Federal Highway Administration, the Federal Transit Administration, and the Federal Aviation Administration (for airport improvements). Many local government projects receive funds from the Department of Housing and Urban Development. The Federal Emergency Management Agency provides funds for disaster relief.

- Does the project require a Federal permit, license, or other approval? Often housing developments impact wetlands, so a Corps of Engineers permit may be required. Airport projects frequently require approvals from the Federal Aviation Administration. Many communications activities, including cellular tower construction, are licensed by the Federal Communications Commission. Hydropower and pipeline development requires approval from the Federal Energy Regulatory Commission. Creation of new bank branches must be approved by the Federal Deposit Insurance Corporation.
Sometimes Federal involvement is obvious. More often, the answer is not immediately apparent. If you have a question, contact the project sponsor to obtain additional information and to inquire about Federal involvement. All Federal agencies have Web sites, many listing regional or local contacts and information on major projects. The SHPO/tribe, State or local planning commissions, or statewide historic preservation organizations may also have project information.

Once you have identified the responsible Federal agency, write to the agency to request a project description and inquire about the status of project planning. Ask how the agency plans to comply with Section 106 and begin to voice your concerns. Keep the SHPO/tribe advised of your interest and contacts with the Federal agency.

**Monitoring Federal Actions**

The earlier you learn about proposed Federal actions, the greater your chance of influencing the outcome of Section 106 review.

- Learn more about the history of your neighborhood, city, or State. Join a local or statewide preservation, historical, or archeological organization. These organizations are often the ones first contacted by Federal agencies.

- If there is a clearinghouse that distributes information about local, State, tribal, and Federal projects, make sure you or your organization is on their mailing list.

- Make the SHPO or tribe aware of your interest.

- Become more involved in State and local decision making. Ask about the applicability of Section 106 to projects under State, tribal, or local review. Does your State, tribe, or community have preservation laws in place? If so, become knowledgeable about and active in the implementation of these laws.

- Review the local newspaper for notices about projects being reviewed under other Federal statutes, especially the National Environmental Policy Act (NEPA). Under NEPA, a Federal agency must determine if its proposed actions will significantly impact the environment. Usually, if a Federal agency is analyzing a project's environmental impacts under NEPA, then it must also complete a Section 106 review.
WORKING WITH FEDERAL AGENCIES

Throughout Section 106 review, Federal agencies must consider the views of the public. This is particularly important when an agency is trying to identify historic properties that might be affected by a project and is considering ways to avoid or minimize harm. In either case, agencies must give the public a chance to learn about the project and provide their views.

How agencies publicize projects depends on the nature and complexity of the particular project and the agency's public involvement procedures. Public meetings are often noted in local newspapers and on television and radio. A daily Government publication, the Federal Register (available at many public libraries and online at www.access.gpo.gov), has notices concerning projects, including those being reviewed under the National Environmental Policy Act (NEPA). Federal agencies often use NEPA public outreach for purposes of Section 106 review.

Federal agencies also frequently contact museums and historical societies directly to learn about historic properties and community concerns. Let these organizations know of your interest.

When the agency provides you with information, let the agency know if you disagree with its findings regarding what properties are eligible for the National Register of Historic Places or how the proposed project may affect them. Tell the agency—in writing—about any important properties that you think have been overlooked or incorrectly evaluated. Be sure to provide documentation to support your views.

When the Federal agency releases information about project alternatives under consideration, make it aware of the options you believe would be most beneficial. To support alternatives that would preserve historic properties, be prepared to discuss costs and how well your preferred alternatives would meet project needs. Sharing success stories about the treatment or reuse of similar resources can be helpful.

U.S. Fish and Wildlife Service collaborated with the Chinook Tribe and Portland State University to interpret the Cathlapotle archaeological site in Washington State. To foster better understanding of the site, the partners developed tours, an archaeology festival, and educational programs. (photo: Kenneth Ames, Portland State University)

Applicants for Federal assistance or permits, and their consultants, often undertake research and analyses on behalf of a Federal agency. Be prepared to make your interests and views known to them, but remember that the Federal agency is ultimately responsible for completing Section 106 review. Make sure that you also convey your concerns directly to the Federal agency.
In addition to seeking the views of the public, Federal agencies must actively consult with certain organizations and individuals during review. This interactive consultation is at the heart of Section 106 review.

Consultation does not mandate a specific outcome. Rather, it is the process of seeking consensus about how project effects on historic properties should be handled. The organizations and individuals that Federal agencies must consult are called “consulting parties.”

To influence project outcomes, you may work through the consulting parties, particularly those who represent your interests. For instance, if you live within the local jurisdiction where a project is taking place, make sure to express your views on historic preservation issues to the local government officials who participate in consultation.

You or your organization, however, may want to take a more active role in Section 106 review, especially if you have a legal or economic interest in the project or the affected properties. You might also have an interest in the effects of the project as an individual, a business owner, or a member of a neighborhood association, preservation group, or other organization. Under these circumstances, you or your organization may write to the Federal agency asking to become a consulting party.

**Who Are “Consulting Parties”?**

The following parties are entitled to actively participate as consulting parties during Section 106 review:

- State Historic Preservation Officers
- Indian tribes
- Native Hawaiian organizations
- Local governments
- Applicants for Federal assistance, permits, licenses, and other approvals

Other individuals and organizations with a demonstrated interest in the project may participate in Section 106 review as consulting parties "due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties." Their participation is subject to approval by the responsible Federal agency.
When requesting consulting party status, explain why you believe your participation would be valuable to successful resolution. Since the SHPO/tribe will assist the Federal agency in deciding who will participate in the consultation, be sure to provide the SHPO/tribe with a copy of your letter to the agency.

Consulting party status entitles you to share your views, receive and review pertinent information, offer ideas, and consider possible solutions together with the Federal agency and other consulting parties. It is up to you to decide how actively you want to participate in consultation.

Making the Most of Consultation
Consultation will vary depending on the Federal agency’s planning process and the nature of the project and its effects.

Often consultation involves diverse participants with a variety of concerns and issues, including preservation proponents as well as those who view historic properties as impediments.

Effective consultation occurs when you:

- keep an open mind;
- state your interests clearly;
- acknowledge that others have legitimate interests, and seek to understand and accommodate them;
- consider a wide range of options; and
- identify shared goals and seek options that allow mutual gain.

Creative ideas about alternatives—not complaints—are the hallmarks of effective consultation.

Local groups met with State agencies and city officials to discuss highway improvement plans to ease traffic congestion between Kentucky and Indiana. They expressed concern about the potential effect on sites such as the historic Swartz Farm.

The Federal agency makes the ultimate decision. However, if you are denied consulting party status, you may contact the ACHP to request a review of the matter.
Under Section 106 review, most harmful effects are addressed successfully by the Federal agency, the SHPO/tribe, and any other consulting parties. So, your first points of contact should always be the Federal agency and the SHPO/tribe. However, the ACHP can also assist with your questions and concerns.

When there is significant public controversy, or if the project will have substantial effects on important historic properties, the ACHP may elect to participate directly in the consultation. The ACHP may also decide to get involved if important policy questions are raised or if there are issues of concern to Indian tribes or Native Hawaiian organizations.

Whether the ACHP becomes involved in consultation or not, you may contact the ACHP to express your views or to request guidance, advice, or technical assistance. Regardless of the scale of the project or the magnitude of its effects, the ACHP is available to assist with dispute resolution and advise on the conduct of Section 106 decision making.

If you disagree with the Federal agency regarding which historic properties are affected by a project or how they will be impacted, contact the ACHP. The ACHP may then advise the Federal agency to change its findings.

Contacting the ACHP: A Checklist
When you contact the ACHP, try to have the following information available:
- the name of the responsible Federal agency and how it is involved;
- a description of the project;
- the historic properties involved; and
- a clear statement of your concerns about the project and its effect on historic properties.

If you suspect Federal involvement but have been unable to verify it, or if you believe that the Federal agency or one of the other participants in review has not fulfilled its responsibilities under the ACHP’s regulations, you can ask the ACHP to investigate. In either case, be as specific as possible.
WHEN AGENCIES DON'T FOLLOW THE RULES

Federal agencies must conclude Section 106 review before project funds are approved or permits issued. They must not sign contracts or take other actions that would preclude consideration of the full range of alternatives to avoid or minimize harm to historic properties before Section 106 review is complete.

If the agency acts without properly completing Section 106 review, the ACHP can issue a finding that the agency has foreclosed the possibility of meaningful review of the project. This means that, in the ACHP's opinion, the agency has failed to comply with Section 106 and therefore has not met the requirements of Federal law.

A vigilant public helps ensure that Federal agencies comply fully with Section 106. In response to requests, the ACHP can investigate questionable actions and advise agencies to do what is required. As a last resort, preservation groups or individuals can litigate in order to enforce Section 106.

FOLLOWING THROUGH

Designed to accommodate project needs and historic values, Section 106 review needs strong public participation if it is to be meaningful. Section 106 review can—and does—permit the public to influence how Federal actions affect historic properties. By keeping abreast of Federal involvement, participating in consultation, and knowing when and whom to ask for help, you can play an active role in deciding the future of your community.

Section 106 review gives you a chance to weigh in when Federal actions will affect historic properties you care about. Seize that chance and make a difference!

The Confederate submarine H.L. Hunley, which successfully completed the world's first submarine attack on a surface ship, was raised from the ocean floor through funding by an unprecedented collaboration among Federal and State agencies, private-sector organizations, corporations, and individuals. (photo: Friends of the Hunley, Inc.)
CONTACT INFORMATION

Advisory Council on Historic Preservation
Office of Federal Agency Programs
1100 Pennsylvania Avenue, NW, Suite 809
Washington, DC 20004
Phone: (202) 606-8503
Fax: (202) 606-8647
E-mail: achp@achp.gov
Web site: www.achp.gov

The ACHP's Web site includes "Working with Section 106" and contact information for Federal agencies, SHPOs, and THPOs.

The ACHP's Colorado office handles most Section 106 reviews in the western States:
12136 West Bayaud Avenue, Suite 330
Lakewood, CO 80228
Phone: (303) 969-5110
Fax: (303) 969-5115

National Trust for Historic Preservation
1785 Massachusetts Avenue, NW
Washington, DC 20036
Phone: (800) 944-6847 or (202) 588-6000
Fax: (202) 598-6038
Web site: www.nationaltrust.org

The National Trust has regional offices in San Francisco, Denver, Fort Worth, Chicago, Boston, and Charleston.

National Conference of State Historic Preservation Officers
444 N. Capitol Street, NW, Suite 342
Washington, DC 20001-7572
Phone: (202) 624-5465
Fax: (202) 624-5419
Web site: www.ncshpo.org

National Association of Tribal Historic Preservation Officers
P.O. Box 19189
Washington, DC 20036-9189
Phone: (202) 628-8476
Fax: (202) 628-2241
Web site: www.nathpo.org

National Park Service
Heritage Preservation Services
1201 Eye Street, NW, 2255
Washington, DC 20005
Phone: (202) 513-7270
Web site: www2.cr.nps.gov

National Register of Historic Places
1201 Eye Street, NW
8th Floor (MS 2280)
Washington, DC 20005
Phone: (202) 354-2213
Web site: www.cr.nps.gov/nr
TO LEARN MORE

For detailed information about the ACHP, Section 106 review process, and our other activities, visit us at www.achp.gov or contact us at:

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U.S. Department of the Interior, National Park Service
National Register, History and Education

By the staff of the National Register of Historic Places
finalized by Patrick W. Andrus
edited by Rebecca H. Shrimpton
1990

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Note: Except for the above illustrations, the photographs and captions found in the printed version of How to Apply the National Register Criteria are omitted from this electronic version.

http://www.cr.nps.gov.nr/publications/bulletins/nrb15/
Table of Contents

Mission

Preface

I. Introduction

II. National Register Criteria for Evaluation

III. How to Use this Bulletin to Evaluate a Property

IV. How to Define Categories of Historic Properties

V. How to Evaluate a Property Within its Historic Context

VI. How to Identify the Type of Significance of a Property

VII. How to Apply the Criteria Considerations

VIII. How to Evaluate the Integrity of a Property

IX. Summary of the National Historic Landmarks Criteria for Evaluation

X. Glossary

XI. List of National Register Bulletins
U.S. Department of the Interior, National Park Service
National Register, History and Education

Mission Statement

The mission of the Department of the Interior is to protect and provide access to our Nation's natural and cultural heritage and honor our trust responsibilities to tribes.

This material is partially based upon work conducted under a cooperative agreement with the National Conference of State Historic Preservation Officers and the U.S. Department of the Interior.
PREFACE

Preserving historic properties as important reflections of our American heritage became a national policy through passage of the Antiquities Act of 1906, the Historic Sites Act of 1935, and the National Historic Preservation Act of 1966, as amended. The Historic Sites Act authorized the Secretary of the Interior to identify and recognize properties of national significance (National Historic Landmarks) in United States history and archeology. The National Historic Preservation Act of 1966 authorized the Secretary to expand this recognition to properties of local and State significance in American history, architecture, archeology, engineering, and culture, and worthy of preservation. The National Register of Historic Places is the official list of these recognized properties, and is maintained and expanded by the National Park Service on behalf of the Secretary of the Interior.

The National Register of Historic Places documents the appearance and importance of districts, sites, buildings, structures, and objects significant in our prehistory and history. These properties represent the major patterns of our shared local, State, and national experience. To guide the selection of properties included in the National Register, the National Park Service has developed the National Register Criteria for Evaluation. These criteria are standards by which every property that is nominated to the National Register is judged. In addition, the National Park Service has developed criteria for the recognition of nationally significant properties, which are designated National Historic Landmarks and prehistoric and historic units of the National Park System. Both these sets of criteria were developed to be consistent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, which are uniform, national standards for preservation activities.

This publication explains how the National Park Service applies these criteria in evaluating the wide range of properties that may be significant in local, State, and national history. It should be used by anyone who must decide if a particular property qualifies for the National Register of Historic Places. Listing properties in the National Register is an important step in a nationwide preservation process. The responsibility for the identification, initial evaluation, nomination, and treatment of historic resources lies with private individuals, State historic preservation offices, and Federal preservation offices, local governments, and Indian tribes. The final evaluation and listing of properties in the National Register is the
responsibility of the Keeper of the National Register. This bulletin was prepared by staff of the National Register Branch, Interagency Resources Division, National Park Service, with the assistance of the History Division. It was originally issued in draft form in 1982. The draft was revised into final form by Patrick W. Andrus, Historian, National Park Service, and edited by Rebecca H. Shrimpton, Consulting Historian. Beth L Savage, National Register and Sarah Dillard Pope, National Register, NCSHPO coordinated the latest revision of this bulletin. Antionette J. Lee, Tanya Gossett, and Kira Badamo coordinated earlier revisions.

(1) The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation

National Register Home | Publications Home | Previous Page | Next Page

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I. INTRODUCTION

The National Register is the nation’s inventory of historic places and the national repository of documentation on the variety of historic property types, significance, abundance, condition, ownership, needs, and other information. It is the beginning of a national census of historic properties. The National Register Criteria for Evaluation define the scope of the National Register of Historic Places; they identify the range of resources and kinds of significance that will qualify properties for listing in the National Register. The Criteria are written broadly to recognize the wide variety of historic properties associated with our prehistory and history.

Decisions concerning the significance, historic integrity, documentation, and treatment of properties can be made reliably only when the resource is evaluated within its historic context. The historic context serves as the framework within which the National Register Criteria are applied to specific properties or property types. (See Part V for a brief discussion of historic contexts. Detailed guidance for developing and applying historic contexts is contained in National Register Bulletin How to Complete the National Register Registration Form and National Register Bulletin: How to Complete the National Register Multiple Property Documentation Form)

The guidelines provided here are intended to help you understand the National Park Service's use of the Criteria for Evaluation, historic contexts, integrity, and Criteria Considerations, and how they apply to properties under consideration for listing in the National Register. Examples are provided throughout, illustrating specific circumstances in which properties are and are not eligible for the National Register. This bulletin should be used by anyone who is:

- Preparing to nominate a property to the National Register,
- Seeking a determination of a property’s eligibility,
- Evaluating the comparable significance of a property to those listed in the National Register, or
- Expecting to nominate a property as a National Historic Landmark in addition to nominating it to the National Register.
This bulletin also contains a summary of the National Historic Landmarks Criteria for Evaluation (see Part IX). National Historic Landmarks are those districts, sites, buildings, structures, and objects designated by the Secretary of the Interior as possessing national significance in American history, architecture, archeology, engineering, and culture. Although National Register documentation includes a recommendation about whether a property is significant at the local, State, or national level, the only official designation of national significance is as a result of National Historic Landmark designation by the Secretary of the Interior, National Monument designation by the President of the United States, or establishment as a unit of the National Park System by Congress. These properties are automatically listed in the National Register.
II. NATIONAL REGISTER CRITERIA FOR EVALUATION

Criteria for Evaluation

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

A. That are associated with events that have made a significant contribution to the broad patterns of our history; or

B. That are associated with the lives of significant persons in or past; or

C. That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

D. That have yielded or may be likely to yield, information important in history or prehistory.

Criteria Considerations

Ordinarily cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

a. A religious property deriving primary significance from architectural or artistic distinction or historical importance; or
Section II: How to Apply the National Register Criteria for Evaluation, National Register...

b. A building or structure removed from its original location but which is primarily significant for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

c. A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building associated with his or her productive life; or

d. A cemetery that derives its primary importance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

e. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

f. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or

g. A property achieving significance within the past 50 years if it is of exceptional importance.

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III. HOW TO USE THIS BULLETIN TO EVALUATE A PROPERTY

For a property to qualify for the National Register it must meet one of the National Register Criteria for Evaluation by:

- Being associated with an important historic context and
- Retaining historic integrity of those features necessary to convey its significance.

Information about the property based on physical examination and documentary research is necessary to evaluate a property's eligibility for the National Register. Evaluation of a property is most efficiently made when following this sequence:

1. Categorize the property (Part IV). A property must be classified as a district, site, building, structure, or object for inclusion in the National Register.

2. Determine which prehistoric or historic context(s) the property represents (Part V). A property must possess significance in American history, architecture, archeology, engineering, or culture when evaluated within the historic context of a relevant geographic area.

3. Determine whether the property is significant under the National Register Criteria (Part VI). This is done by identifying the links to important events or persons, design or construction features, or information potential that make the property important.

4. Determine if the property represents a type usually excluded from the National Register (Part VII). If so, determine if it meets any of the Criteria Considerations.

5. Determine whether the property retains integrity (Part VIII). Evaluate the aspects of location, design, setting, workmanship, materials, feeling, and association that the property must retain to convey its historic significance.

If, after completing these steps, the property appears to qualify for the National Register, the next step is to prepare a written nomination. (Refer to the National Register bulletin How to Complete the National Register Registration Form.)


8/30/2005
IV. HOW TO DEFINE CATEGORIES OF HISTORIC PROPERTIES

1. Building
2. Structure
3. Object
4. Site
5. District

The National Register of Historic Places includes significant properties, classified as buildings, sites, districts, structures, or objects. It is not used to list intangible values, except in so far as they are associated with or reflected by historic properties. The National Register does not list cultural events, or skilled or talented individuals, as is done in some countries. Rather, the National Register is oriented to recognizing physically concrete properties that are relatively fixed in location.

For purposes of National Register nominations, small groups of properties are listed under a single category, using the primary resource. For example, a city hall and fountain would be categorized by the city hall (building), a farmhouse with two outbuildings would be categorized by the farmhouse (building), and a city park with a gazebo would be categorized by the park (site). Properties with large acreage or a number of resources are usually considered districts. Common sense and reason should dictate the selection of categories.

BUILDING

A building, such as a house, barn, church, hotel, or similar construction, is created principally to shelter any form of human activity. "Building" may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn.
Buildings eligible for the National Register must include all of their basic structural elements. Parts of buildings, such as interiors, facades, or wings, are not eligible independent of the rest of the existing building. The whole building must be considered, and its significant features must be identified.

If a building has lost any of its basic structural elements, it is usually considered a "ruin" and is categorized as a site.

**Examples of buildings include:**

- administration building
- carriage house
- church
- city or town hall
- courthouse
- detached kitchen, barn, and privy
- dormitory
- fort
- garage
- hotel
- house
- library
- mill building
- office building
- post office
- school
- shed
- social hall
- stable
- store
- theater
- train station

**STRUCTURE**

The term "structure" is used to distinguish from buildings those functional constructions made usually for purposes other than creating human shelter.

Structures nominated to the National Register must include all of the extant basic structural elements. Parts of structures can not be considered eligible if the whole structure remains. For example, a truss bridge is composed of the metal or wooden truss, the abutments, and supporting piers, all of which, if extant, must be included when considering the property for eligibility.

If a structure has lost its historic configuration or pattern of organization through deterioration or demolition, it is usually considered a "ruin" and is categorized as a site.

**Examples of structures include:**

- aircraft
- apiary
- automobile
- bandstand
- boats and ships bridge
- cairn
- canal
- carousel
- corncrib
- dam
- earthwork
- fence
- gazebo
- grain elevator
- highway
- irrigation system
- kiln
- lighthouse
- railroad grade
- silo
- trolley car
- tunnel windmill

**OBJECT**

The term "object" is used to distinguish from buildings and structures those constructions that are primarily artistic in nature or are relatively small in scale and simply constructed. Although it may be, by nature or design, movable, an object is associated with a specific setting.
or environment.

Small objects not designed for a specific location are normally not eligible. Such works include transportable sculpture, furniture, and other decorative arts that, unlike a fixed outdoor sculpture, do not possess association with a specific place.

Objects should be in a setting appropriate to their significant historic use, roles, or character. Objects relocated to a museum are inappropriate for listing in the National Register.

Examples of objects include:

- boundary marker
- monument
- milepost
- fountain
- sculpture
- statuary

SITE

A site is the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself possesses historic, cultural, or archeological value regardless of the value of any existing structure.

A site can possess associative significance or information potential or both, and can be significant under any or all of the four criteria. A site need not be marked by physical remains if it is the location of a prehistoric or historic event or pattern of events and if no buildings, structures, or objects marked it at the time of the events. However, when the location of a prehistoric or historic event cannot be conclusively determined because no other cultural materials were present or survive, documentation must be carefully evaluated to determine whether the traditionally recognized or identified site is accurate.

A site may be a natural landmark strongly associated with significant prehistoric or historic events or patterns of events, if the significance of the natural feature is well documented through scholarly research. Generally, though, the National Register excludes from the definition of "site" natural waterways or bodies of water that served as determinants in the location of communities or were significant in the locality's subsequent economic development. While they may have been "avenues of exploration," the features most appropriate to document this significance are the properties built in association with the waterways.

Examples of sites include:

- battlefield
- campsite
- cemeteries significant for information potential or historic association
- ceremonial site
- designed landscape
- habitation site
- natural feature (such as a rock formation) having cultural significance
- petroglyph
- ruins of a building or structure
- shipwreck
- trail
- village site

DISTRICT

A district possesses a significant concentration, linkage, or continuity of sites, buildings,
structures, or objects united historically or aesthetically by plan or physical development.

Concentration, Linkage, & Continuity of Features
A district derives its importance from being a unified entity, even though it is often composed of a wide variety of resources. The identity of a district results from the interrelationship of its resources, which can convey a visual sense of the overall historic environment or be an arrangement of historically or functionally related properties. For example, a district can reflect one principal activity, such as a mill or a ranch, or it can encompass several interrelated activities, such as an area that includes industrial, residential, or commercial buildings, sites, structures, or objects. A district can also be a grouping of archeological sites related primarily by their common components; these types of districts often will not visually represent a specific historic environment.

Significance
A district must be significant, as well as being an identifiable entity. It must be important for historical, architectural, archeological, engineering, or cultural values. Therefore, districts that are significant will usually meet the last portion of Criterion C plus Criterion A, Criterion B, other portions of Criterion C, or Criterion D.

Types of Features
A district can comprise both features that lack individual distinction and individually distinctive features that serve as focal points. It may even be considered eligible if all of the components lack individual distinction, provided that the grouping achieves significance as a whole within its historic context. In either case, the majority of the components that add to the district's historic character, even if they are individually undistinguished, must possess integrity, as must the district as a whole.

A district can contain buildings, structures, sites, objects, or open spaces that do not contribute to the significance of the district. The number of noncontributing properties a district can contain yet still convey its sense of time and place and historical development depends on how these properties affect the district's integrity. In archeological districts, the primary factor to be considered is the effect of any disturbances on the information potential of the district as a whole.

Geographical Boundaries
A district must be a definable geographic area that can be distinguished from surrounding properties by changes such as density, scale, type, age, style of sites, buildings, structures, and objects, or by documented differences in patterns of historic development or associations. It is seldom defined, however, by the limits of current parcels of ownership, management, or planning boundaries. The boundaries must be based upon a shared relationship among the properties constituting the district.

Discontiguous Districts
A district is usually a single geographic area of contiguous historic properties; however, a district can also be composed of two or more definable significant areas separated by nonsignificant areas. A discontiguous district is most appropriate where:

- Elements are spatially discrete;
- Space between the elements is not related to the significance of the district; and
- Visual continuity is not a factor in the significance.
In addition, a canal can be treated as a discontiguous district when the system consists of man-made sections of canal interspersed with sections of river navigation. For scattered archaeological properties, a discontiguous district is appropriate when the deposits are related to each other through cultural affiliation, period of use, or site type.

It is not appropriate to use the discontiguous district format to include an isolated resource or small group of resources which were once connected to the district, but have since been separated either through demolition or new construction. For example, do not use the discontiguous district format to nominate individual buildings of a downtown commercial district that have become isolated through demolition.

**Examples of districts include:**

- business districts
- canal systems
- groups of habitation sites
- college campuses
- estates and farms with large acreage/numerous properties
- industrial complexes
- irrigation systems
- residential areas
- rural villages
- transportation networks
- rural historic districts

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V. HOW TO EVALUATE A PROPERTY WITHIN ITS HISTORIC CONTEXT

1. Understanding Historic Contexts
2. How to Evaluate a Property Within its Historic Context
3. Local, State, and National Historic Contexts

UNDERSTANDING HISTORIC CONTEXTS

To qualify for the National Register, a property must be significant; that is, it must represent a significant part of the history, architecture, archeology, engineering, or culture of an area, and it must have the characteristics that make it a good representative of properties associated with that aspect of the past. This section explains how to evaluate a property within its historic context. (For a complete discussion of historic contexts, see National Register Bulletin: Guidelines for Completing National Register of Historic Places Registration Forms).

The significance of a historic property can be judged and explained only when it is evaluated within its historic context. Historic contexts are those patterns or trends in history by which a specific occurrence, property, or site is understood and its meaning (and ultimately its significance) within history or prehistory is made clear. Historians, architectural historians, folklorists, archeologists, and anthropologists use different words to describe this phenomena such as trend, pattern, theme, or cultural affiliation, but ultimately the concept is the same.

The concept of historic context is not a new one; it has been fundamental to the study of history since the 18th century and, arguably, earlier than that. Its core premise is that resources, properties, or happenings in history do not occur in a vacuum but rather are part of larger trends or patterns.

In order to decide whether a property is significant within its historic context, the following five things must be determined:

- The facet of prehistory or history of the local area, State, or the nation that the property represents;
- Whether that facet of prehistory or history is significant;
Section V: How to Apply the National Register Criteria for Evaluation, National Register ...

109

- Whether it is a type of property that has relevance and importance in illustrating the historic context;
- How the property illustrates that history; and finally
- Whether the property possesses the physical features necessary to convey the aspect of prehistory or history with which it is associated.

These five steps are discussed in detail below. If the property being evaluated does represent an important aspect of the area's history or prehistory and possesses the requisite quality of integrity, then it qualifies for the National Register.

HOW TO EVALUATE A PROPERTY WITHIN ITS HISTORIC CONTEXT

Identify what the property represents: the theme(s), geographical limits, and chronological period that provide a perspective from which to evaluate the property's significance.

Historic contexts are historical patterns that can be identified through consideration of the history of the property and the history of the surrounding area. Historic contexts may have already been defined in your area by the State historic preservation office, Federal agencies, or local governments. In accordance with the National Register Criteria, the historic context may relate to one of the following:

- An event, a series of events or activities, or patterns of an area's development (Criterion A);
- Association with the life of an important person (Criterion B);
- A building form, architectural style, engineering technique, or artistic values, based on a stage of physical development, or the use of a material or method of construction that shaped the historic identity of an area (Criterion C); or
- A research topic (Criterion D).

Determine how the theme of the context is significant in the history of the local area, the State, or the nation.

A theme is a means of organizing properties into coherent patterns based on elements such as environment, social/ethnic groups, transportation networks, technology, or political developments that have influenced the development of an area during one or more periods of prehistory or history. A theme is considered significant if it can be demonstrated, through scholarly research, to be important in American history. Many significant themes can be found in the following list of Areas of Significance used by the National Register.

AREAS OF SIGNIFICANCE

- Agriculture
- Architecture
- Archeology
- Prehistoric
- Historic--Aboriginal
- Historic--Non-Aboriginal
- Art
- Commerce
- Communications

Engineering
Entertainment/Recreation
Landscape Architecture

Ethnic Heritage
Asian
Black
European
Hispanic
Native American
Pacific Islander

Law
Literature
Maritime History
Military
Performing Arts
Philosophy
Politics/Government

http://www.cr.nps.gov/nr/publications/bulletins/nrb15/nrb15_5.htm

8/30/2005
Determine what the property type is and whether it is important in illustrating the historic context.

A context may be represented by a variety of important property types. For example, the context of "Civil War Military Activity in Northern Virginia" might be represented by such properties as: a group of mid-19th century fortification structures; an open field where a battle occurred; a knoll from which a general directed troop movements; a sunken transport ship; the residences or public buildings that served as company headquarters; a railroad bridge that served as a focal point for a battle; and earthworks exhibiting particular construction techniques.

Because a historic context for a community can be based on a distinct period of development, it might include numerous property types. For example, the context "Era of Industrialization in Grand Bay, Michigan, 1875 - 1900" could be represented by important property types as diverse as sawmills, paper mill sites, salt refining plants, flour mills, grain elevators, furniture factories, workers housing, commercial buildings, social halls, schools, churches, and transportation facilities.

A historic context can also be based on a single important type of property. The context "Development of County Government in Georgia, 1777-1861" might be represented solely by courthouses. Similarly, "Bridge Construction in Pittsburgh, 1870-1920" would probably only have one property type.

Determine how the property represents the context through specific historic associations, architectural or engineering values, or information potential (the Criteria for Evaluation).

For example, the context of county government expansion is represented under Criterion A by historic districts or buildings that reflect population growth, development patterns, the role of government in that society, and political events in the history of the State, as well as the impact of county government on the physical development of county seats. Under Criterion C, the context is represented by properties whose architectural treatments reflect their governmental functions, both practically and symbolically. (See Part VI: How to Identify the Type of Significance of a Property.)

Determine what physical features the property must possess in order for it to reflect the significance of the historic context.

These physical features can be determined after identifying the following:

- Which types of properties are associated with the historic context,
- The ways in which properties can represent the theme, and
- The applicable aspects of integrity.

Properties that have the defined characteristics are eligible for listing. (See Part VIII: How to Evaluate the Integrity of a Property.)
Properties Significant within More than One Historic Context

A specific property can be significant within one or more historic contexts, and, if possible, all of these should be identified. For example, a public building constructed in the 1830s that is related to the historic context of Civil War campaigns in the area might also be related to the theme of political developments in the community during the 1880s. A property is only required, however, to be documented as significant in one context.

Comparing Related Properties

Properties listed in the National Register must possess significance when evaluated in the perspective of their historic context. Once the historic context is established and the property type is determined, it is not necessary to evaluate the property in question against other properties if:

- It is the sole example of a property type that is important in illustrating the historic context or
- It clearly possesses the defined characteristics required to be strongly representative of the context.

If these two conditions do not apply, then the property will have to be evaluated against other examples of the property type to determine its eligibility. The geographic level (local, State, or national) at which this evaluation is made is the same as the level of the historic context.

LOCAL, STATE, AND NATIONAL HISTORIC CONTEXTS

Historic contexts are found at a variety of geographical levels or scales. The geographic scale selected may relate to a pattern of historical development, a political division, or a cultural area. Regardless of the scale, the historic context establishes the framework from which decisions about the significance of related properties can be made.

Local Historic Contexts

A local historic context represents an aspect of the history of a town, city, county, cultural area, or region, or any portions thereof. It is defined by the importance of the property, not necessarily the physical location of the property. For instance, if a property is of a type found throughout a State, or its boundaries extend over two States, but its importance relates only to a particular county, the property would be considered of local significance.

The level of context of archeological sites significant for their information potential depends on the scope of the applicable research design. For example, a Late Mississippian village site may yield information in a research design concerning one settlement system on a regional scale, while in another research design it may reveal information of local importance concerning a single group's stone tool manufacturing techniques or house forms. It is a question of how the available information potential is likely to be used.

State Historic Contexts
Properties are evaluated in a State context when they represent an aspect of the history of the State as a whole (or American Samoa, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or the Virgin Islands). These properties do not necessarily have to belong to property types found throughout the entire State: they can be located in only a portion of the State's present political boundary. It is the property's historic context that must be important statewide. For example, the "cotton belt" extends through only a portion of Georgia, yet its historical development in the antebellum period affected the entire State. These State historic contexts may have associated properties that are statewide or locally significant representations. A cotton gin in a small town might be a locally significant representation of this context, while one of the largest cotton producing plantations might be of State significance.

A property whose historic associations or information potential appears to extend beyond a single local area might be significant at the State level. A property can be significant to more than one community or local area, however, without having achieved State significance.

A property that overlaps several State boundaries can possibly be significant to the State or local history of each of the States. Such a property is not necessarily of national significance, however, nor is it necessarily significant to all of the States in which it is located.

Prehistoric sites are not often considered to have "State" significance, per se, largely because States are relatively recent political entities and usually do not correspond closely to Native American political territories or cultural areas. Numerous sites, however, may be of significance to a large region that might geographically encompass parts of one, or usually several, States. Prehistoric resources that might be of State significance include regional sites that provide a diagnostic assemblage of artifacts for a particular cultural group or time period or that provide chronological control (specific dates or relative order in time) for a series of cultural groups.

National Historic Contexts

Properties are evaluated in a national context when they represent an aspect of the history of the United States and its territories as a whole. These national historic contexts may have associated properties that are locally or statewide significant representations, as well as those of national significance.

Properties designated as nationally significant and listed in the National Register are the prehistoric and historic units of the National Park System and those properties that have been designated National Historic Landmarks. The National Historic Landmark criteria are the standards for nationally significant properties; they are found in the Code of Federal Regulations, Title 36, Part 65 and are summarized in this bulletin in Part IX: Summary of National Historic Landmarks Criteria for Evaluation.

A property with national significance helps us understand the history of the nation by illustrating the nationwide impact of events or persons associated with the property, its architectural type or style, or information potential. It must be of exceptional value in representing or illustrating an important theme in the history of the nation.

Nationally significant properties do not necessarily have to belong to a property type found throughout the entire country: they can be located in only a portion of the present political boundaries. It is their historic context that must be important nationwide. For example, the American Civil War was fought in only a portion of the United States, yet its impact was nationwide. The site

of a small military skirmish might be a locally significant representation of this national context, while the capture of the State's largest city might be a statewide significant representation of the national context.

When evaluating properties at the national level for designation as a National Historic Landmark, please refer to the National Historic Landmarks outline, History and Prehistory in the National Park System and the National Historic Landmarks Program 1987. (For more information about the National Historic Landmarks program, please write to the Department of the Interior, National Park Service, History Division, 1849 C St. NW, #2280, Washington, DC 20240.)
VI. HOW TO IDENTIFY THE TYPE OF SIGNIFICANCE OF A PROPERTY

INTRODUCTION

When evaluated within its historic context, a property must be shown to be significant for one or more of the four Criteria for Evaluation - A, B, C, or D (listed earlier in Part II). The Criteria describe how properties are significant for their association with important events or persons, for their importance in design or construction, or for their information potential.

The basis for judging a property's significance and, ultimately, its eligibility under the Criteria is historic context. The use of historic context allows a property to be properly evaluated in a nearly infinite number of capacities. For instance, Criterion C: Design/Construction can accommodate properties representing construction types that are unusual or widely practiced, that are innovative or traditional, that are "high style" or vernacular, that are the work of a famous architect or an unknown master craftsman. The key to determining whether the characteristics or associations of a particular property are significant is to consider the property within its historic context.

After identifying the relevant historic context(s) with which the property is associated, the four Criteria are applied to the property. Within the scope of the historic context, the National Register Criteria define the kind of significance that the properties represent.

For example, within the context of "19th Century Gunpowder Production in the Brandywine Valley," Criterion A would apply to those properties associated with important events in the founding and development of the industry. Criterion B would apply to those properties associated with persons who are significant in the founding of the industry or associated with important inventions related to gunpowder manufacturing. Criterion C would apply to those buildings, structures, or objects whose architectural form or style reflect important design qualities integral to the industry. And Criterion D would apply to properties that can convey information important in our understanding of this industrial process. If a property qualifies under more than one of the Criteria, its significance under each should be considered, if possible, in order to identify all aspects of its historical value.
National Register Criteria for Evaluation**

1. Criterion A: Event
2. Criterion B: Person
3. Criterion C: Design/Construction
4. Criterion D: Information Potential

**For a complete listing of the Criteria for Evaluation, refer to Part II of this bulletin

The National Register Criteria recognize different types of values embodied in districts, sites, buildings, structures, and objects. These values fall into the following categories:

- **Associative value (Criteria A and B):** Properties significant for their association or linkage to events (Criteria A) or persons (Criteria B) important in the past.
- **Design or Construction value (Criterion C):** Properties significant as representatives of the manmade expression of culture or technology.
- **Information value (Criterion D):** Properties significant for their ability to yield important information about prehistory or history.

**CRITERION A: EVENT**

Properties can be eligible for the National Register if they are associated with events that have made a significant contribution to the broad patterns of our history.

Understanding Criterion A: Event

To be considered for listing under Criterion A, a property must be associated with one or more events important in the defined historic context. Criterion A recognizes properties associated with single events, such as the founding of a town, or with a pattern of events, repeated activities, or historic trends, such as the gradual rise of a port city's prominence in trade and commerce. The event or trends, however, must clearly be important within the associated context: settlement, in the case of the town, or development of a maritime economy, in the case of the port city. Moreover, the property must have an important association with the event or historic trends, and it must retain historic integrity. (See Part V: How to Evaluate a Property Within its Historic Context.)

Several steps are involved in determining whether a property is significant for its associative values:

- Determine the nature and origin of the property,
- Identify the historic context with which it is associated, and
- Evaluate the property's history to determine whether it is associated with the historic context in any important way.
Applying Criterion A: Event

Types of Events

A property can be associated with either (or both) of two types of events:

- A specific event marking an important moment in American prehistory or history and
- A pattern of events or a historic trend that made a significant contribution to the
development of a community, a State, or the nation.

EXAMPLES OF PROPERTIES ASSOCIATED WITH EVENTS

Properties associated with specific events:

- The site of a battle.
- The building in which an important invention was developed.
- A factory district where a significant strike occurred.
- An archeological site at which a major new aspect of prehistory was discovered, such
as the first evidence of man and extinct Pleistocene animals being contemporaneous.
- A site where an important facet of European exploration occurred.

Properties associated with a pattern of events:

- A trail associated with western migration.
- A railroad station that served as the focus of a community's transportation system and
commerce.
- A mill district reflecting the importance of textile manufacturing during a given
period.
- A building used by an important local social organization.
- A site where prehistoric Native Americans annually gathered for seasonally available
resources and for social interaction.
- A downtown district representing a town's growth as the commercial focus of the
surrounding agricultural area.

Association of the Property with the Events

The property you are evaluating must be documented, through accepted means of historical
or archeological research (including oral history), to have existed at the time of the event or
pattern of events and to have been associated with those events. A property is not eligible if
its associations are speculative. For archeological sites, well reasoned inferences drawn from
data recovered at the site can be used to establish the association between the site and the events.

**Significance of the Association**

Mere association with historic events or trends is not enough, in and of itself, to qualify under Criterion A: the property's specific association must be considered important as well. For example, a building historically in commercial use must be shown to have been significant in commercial history.

**Traditional Cultural Values**

Traditional cultural significance is derived from the role a property plays in a community's historically rooted beliefs, customs, and practices. Properties may have significance under Criterion A if they are associated with events, or series of events, significant to the cultural traditions of a community. *(For more information, refer to National Register Bulletin: Guidelines for Evaluating and Documenting Traditional Cultural Properties.)*

**Eligible**

- A hilltop associated in oral historical accounts with the founding of an Indian tribe or society is eligible.

- A rural community can be eligible whose organization, buildings, or patterns of land use reflect the cultural traditions valued by its long-term residents.

- An urban neighborhood can be eligible as the traditional home of a particular cultural group and as a reflection of its beliefs and practices.

**Not Eligible**

- A site viewed as sacred by a recently established utopian or religious community does not have traditional cultural value and is not eligible.

**CRITERION B: PERSON**

Properties may be eligible for the National Register if they are associated with the lives of persons significant in our past. *(For further information on properties eligible under Criterion B, refer to National Register Bulletin: Guidelines for Evaluating and Documenting Properties Associated with Significant Persons.)*

**Understanding Criterion B: Person**

Criterion B applies to properties associated with individuals whose specific contributions to history can be identified and documented. Persons "significant in our past" refers to individuals whose activities are demonstrably important within a local, State, or national historic context. The criterion is generally restricted to those properties that illustrate (rather
118
than commemorate) a person's important achievements. (The policy regarding commemorative properties, birthplaces, and graves is explained further in Part VII: How to Apply the Criteria Considerations.)

Several steps are involved in determining whether a property is significant for its associative values under Criterion B. First, determine the importance of the individual. Second, ascertain the length and nature of his/her association with the property under study and identify the other properties associated with the individual. Third, consider the property under Criterion B, as outlined below.

**EXAMPLES OF PROPERTIES ASSOCIATED WITH PERSONS**

Properties associated with a Significant Person:

- **The home of an important merchant or labor leader.**
- **The studio of a significant artist.**
- **The business headquarters of an important industrialist.**

**Applying Criterion B: Person**

**Significance of the Individual**

The persons associated with the property must be individually significant within a historic context. A property is not eligible if its only justification for significance is that it was owned or used by a person who is a member of an identifiable profession, class, or social or ethnic group. It must be shown that the person gained importance within his or her profession or group.

**Eligible**

- The residence of a doctor, a mayor, or a merchant is eligible under Criterion B if the person was significant in the field of medicine, politics, or commerce, respectively.

**Not Eligible**

- A property is not eligible under Criterion B if it is associated with an individual about whom no scholarly judgement can be made because either research has not revealed specific information about the person's activities and their impact, or there is insufficient perspective to determine whether those activities or contributions were historically important.

**Association with the Property**

Properties eligible under Criterion B are usually those associated with a person's productive life, reflecting the time period when he or she achieved significance. In some instances this may be the person's home; in other cases, a person's business, office, laboratory, or studio may best represent his or her contribution. Properties that pre- or post-date an individual's significant accomplishments are usually not eligible.
The individual's association with the property must be documented by accepted methods of historical or archeological research, including written or oral history. Speculative associations are not acceptable. For archeological sites, well reasoned inferences drawn from data recovered at the site are acceptable.

**Comparison to Related Properties**

Each property associated with an important individual should be compared to other associated properties to identify those that best represent the person's historic contributions. The best representatives usually are properties associated with the person's adult or productive life. Properties associated with an individual's formative or later years may also qualify if it can be demonstrated that the person's activities during this period were historically significant or if no properties from the person's productive years survives. Length of association is an important factor when assessing several properties with similar associations.

A community or State may contain several properties eligible for associations with the same important person, if each represents a different aspect of the person's productive life. A property can also be eligible if it has brief but consequential associations with an important individual. (Such associations are often related to specific events that occurred at the property and, therefore, it may also be eligible under Criterion A.)

**Association with Groups**

For properties associated with several community leaders or with a prominent family, it is necessary to identify specific individuals and to explain their significant accomplishments.

*Eligible*

- A residential district in which a large number of prominent or influential merchants, professionals, civic leaders, politicians, etc., lived will be eligible under Criterion B if the significance of one or more specific individual residents is explicitly justified.

- A building that served as the seat of an important family is eligible under Criterion B if the significant accomplishments of one or more individual family members is explicitly justified.

*Not Eligible*

- A residential district in which a large number of influential persons lived is not eligible under Criterion B if the accomplishments of a specific individual(s) cannot be documented. If the significance of the district rests in the cumulative importance of prominent residents, however, then the district might still be eligible under Criterion A. Eligibility, in this case, would be based on the broad pattern of community development, through which the neighborhood evolved into the primary residential area for this class of citizens.

- A building that served as the seat of an important family will not be eligible under Criterion B if the significant accomplishments of individual family members cannot be documented. In cases where a succession of family members have lived in a house
and collectively have had a demonstrably significant impact on the community, as a family, the house is more likely to be significant under Criterion A for association with a pattern of events.

**Association with Living Persons**

Properties associated with living persons are usually not eligible for inclusion in the National Register. Sufficient time must have elapsed to assess both the person's field of endeavor and his/her contribution to that field. Generally, the person's active participation in the endeavor must be finished for this historic perspective to emerge. (See Criteria Considerations C and G in Part VII: How to Apply the Criteria Considerations.)

**Association with Architects/Artisans**

Architects, artisans, artists, and engineers are often represented by their works, which are eligible under Criterion C. Their homes and studios, however, can be eligible for consideration under Criterion B, because these usually are the properties with which they are most personally associated.

**Native American Sites**

The known major villages of individual Native Americans who were important during the contact period or later can qualify under Criterion B. As with all Criterion B properties, the individual associated with the property must have made some specific important contribution to history. Examples include sites significantly associated with Chief Joseph and Geronimo. (For more information, refer to National Register Bulletin: Guidelines for Evaluating and Documenting Traditional Cultural Properties.)

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**CRITERION C: DESIGN/CONSTRUCTION**

Properties may be eligible for the National Register if they embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction.

**Understanding Criterion C: Design/Construction**

This criterion applies to properties significant for their physical design or construction, including such elements as architecture, landscape architecture, engineering, and artwork. To be eligible under Criterion C, a property must meet at least one of the following requirements:

- Embody distinctive characteristics of a type, period, or method of construction.
- Represent the work of a master.
- Possess high artistic value.

• Represent a significant and distinguishable entity whose components may lack individual distinction.

The first requirement, that properties "embody the distinctive characteristics of a type, period, or method of construction," refers to the way in which a property was conceived, designed, or fabricated by a people or culture in past periods of history. "The work of a master" refers to the technical or aesthetic achievements of an architect or craftsman. "High artistic values" concerns the expression of aesthetic ideals or preferences and applies to aesthetic achievement.

EXAMPLES OF PROPERTIES ASSOCIATED WITH DESIGN/CONSTRUCTION

Properties associated with design and construction:

• A house or commercial building representing a significant style of architecture.

• A designed park or garden associated with a particular landscape design philosophy.

• A movie theater embodying high artistic value in its decorative features.

• A bridge or dam representing technological advances.

Resources "that represent a significant and distinguishable entity whose components may lack individual distinction" are called "districts." In the Criteria for Evaluation (as published in the Code of Federal Regulations and reprinted in Part II), districts are defined within the context of Criterion C. Districts, however, can be considered for eligibility under all the Criteria, individually or in any combination, as is appropriate. For this reason, the full discussion of districts is contained in Part IV: How to Define Categories of Historic Properties. Throughout the bulletin, however, districts are mentioned within the context of a specific subject, such as an individual Criterion.

Applying Criterion C: Design/Construction

Distinctive Characteristics of Type, Period, and Method of Construction

This is the portion of Criterion C under which most properties are eligible, for it encompasses all architectural styles and construction practices. To be eligible under this portion of the Criterion, a property must clearly illustrate, through "distinctive characteristics," the following:

• The pattern of features common to a particular class of resources,

• The individuality or variation of features that occurs within the class,

• The evolution of that class, or

• The transition between classes of resources.

Distinctive Characteristics: "Distinctive characteristics" are the physical features or traits that commonly recur in individual types, periods, or methods of construction. To be eligible,
a property must clearly contain enough of those characteristics to be considered a true representative of a particular type, period, or method of construction.

Characteristics can be expressed in terms such as form, proportion, structure, plan, style, or materials. They can be general, referring to ideas of design and construction such as basic plan or form, or they can be specific, referring to precise ways of combining particular kinds of materials.

**Eligible**

- A building eligible under the theme of Gothic Revival architecture must have the distinctive characteristics that make up the vertical and picturesque qualities of the style, such as pointed gables, steep roof pitch, board and batten siding, and ornamental bargeboard and veranda trim.

- A late Mississippian village that illustrates the important concepts in prehistoric community design and planning will qualify.

- A designed historic landscape will qualify if it reflects a historic trend or school of theory and practice, such as the City Beautiful Movement, evidencing distinguished design, layout, and the work of skilled craftsmanship.

**Not Eligible**

- A commercial building with some Art Deco detailing is not eligible under Criterion C if the detailing was added merely as an afterthought, rather than fully integrated with overall lines and massing typical of the Art Deco style or the transition between that and another style.

- A designed landscape that has had major changes to its historic design, vegetation, original boundary, topography/grading, architectural features, and circulation system will not qualify.

**Type, Period, and Method of Construction:**

"Type, period, or method of construction" refers to the way certain properties are related to one another by cultural tradition or function, by dates of construction or style, or by choice or availability of materials and technology.

A structure is eligible as a specimen of its type or period of construction if it is an important example (within its context) of building practices of a particular time in history. For properties that represent the variation, evolution, or transition of construction types, it must be demonstrated that the variation, etc., was an important phase of the architectural development of the area or community in that it had an impact as evidenced by later buildings. A property is not eligible, however, simply because it has been identified as the only such property ever fabricated; it must be demonstrated to be significant as well.

**Eligible**

- A building that has some characteristics of the Romanesque Revival style and some characteristics of the Commercial style can qualify if it illustrates the transition of
architectural design and the transition itself is considered an important architectural development.

- A Hopewellian mound, if it is an important example of mound building construction techniques, would qualify as a method or type of construction.

- A building which illustrates the early or the developing technology of particular structural systems, such as skeletal steel framing, is eligible as an example of a particular method of construction.

**Historic Adaptation of the Original Property**

A property can be significant not only for the way it was originally constructed or crafted, but also for the way it was adapted at a later period, or for the way it illustrates changing tastes, attitudes, and uses over a period of time.

A district is eligible under this guideline if it illustrates the evolution of historic character of a place over a particular span of time.

**Eligible**

- A Native American irrigation system modified for use by Europeans could be eligible if it illustrates the technology of either or both periods of construction.

- An early 19th century farmhouse modified in the 1880s with Queen Anne style ornamentation could be significant for the modification itself, if it represented a local variation or significant trend in building construction or remodelling, was the work of a local master (see Works of a Master below), or reflected the tastes of an important person associated with the property at the time of its alteration.

- A district encompassing the commercial development of a town between 1820 and 1910, characterized by buildings of various styles and eras, can be eligible.

**Works of a Master**

A master is a figure of generally recognized greatness in a field, a known craftsman of consummate skill, or an anonymous craftsman whose work is distinguishable from others by its characteristic style and quality. The property must express a particular phase in the development of the master's career, an aspect of his or her work, or a particular idea or theme in his or her craft.

A property is not eligible as the work of a master, however, simply because it was designed by a prominent architect. For example, not every building designed by Frank Lloyd Wright is eligible under this portion of Criterion C, although it might meet other portions of the Criterion, for instance as a representative of the Prairie style.

The work of an unidentified craftsman is eligible if it rises above the level of workmanship of the other properties encompassed by the historic context.

**Properties Possessing High Artistic Values**
High artistic values may be expressed in many ways, including areas as diverse as community design or planning, engineering, and sculpture. A property is eligible for its high artistic values if it so fully articulates a particular concept of design that it expresses an aesthetic ideal. A property is not eligible, however, if it does not express aesthetic ideals or design concepts more fully than other properties of its type.

**Eligible**

- A sculpture in a town square that epitomizes the design principles of the Art Deco style is eligible.
- A building that is a classic expression of the design theories of the Craftsman Style, such as carefully detailed handwork, is eligible.
- A landscaped park that synthesizes early 20th century principles of landscape architecture and expresses an aesthetic ideal of environment can be eligible.
- Properties that are important representatives of the aesthetic values of a cultural group, such as petroglyphs and ground drawings by Native Americans, are eligible.

**Not Eligible**

- A sculpture in a town square that is a typical example of sculpture design during its period would not qualify for high artistic value, although it might be eligible if it were significant for other reasons.
- A building that is a modest example (within its historic context) of the Craftsman Style of architecture, or a landscaped park that is characteristic of turn of the century landscape design would not qualify for high artistic value.

**A Significant and Distinguishable Entity Whose Components May Lack Individual Distinction:** This portion of Criterion C refers to districts. For detailed information on districts, refer to Part IV of this bulletin.

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**CRITERION D: INFORMATION POTENTIAL**

Properties may be eligible for the National Register if they have yielded, or may be likely to yield, information important in prehistory or history.

**Understanding Criterion D: Information Potential**

Certain important research questions about human history can only be answered by the actual physical material of cultural resources. Criterion D encompasses the properties that have the potential to answer, in whole or in part, those types of research questions. The most common type of property nominated under this Criterion is the archeological site (or a district comprised of archeological sites). Buildings, objects, and structures (or districts comprised of these property types), however, can also be eligible for their information potential.
Criterion D has two requirements, which must both be met for a property to qualify:

- The property must have, or have had, information to contribute to our understanding of human history or prehistory, and
- The information must be considered important.

Under the first of these requirements, a property is eligible if it has been used as a source of data and contains more, as yet unretrieved data. A property is also eligible if it has not yet yielded information but, through testing or research, is determined a likely source of data.

Under the second requirement, the information must be carefully evaluated within an appropriate context to determine its importance. Information is considered "important" when it is shown to have a significant bearing on a research design that addresses such areas as: 1) current data gaps or alternative theories that challenge existing ones or 2) priority areas identified under a State or Federal agency management plan.

**Applying Criterion D: Information Potential**

**Archeological Sites**

Criterion D most commonly applies to properties that contain or are likely to contain information bearing on an important archeological research question. The property must have characteristics suggesting the likelihood that it possesses configurations of artifacts, soil strata, structural remains, or other natural or cultural features that make it possible to do the following:

- Test a hypothesis or hypotheses about events, groups, or processes in the past that bear on important research questions in the social or natural sciences or the humanities; or
- Corroborate or amplify currently available information suggesting that a hypothesis is either true or false; or
- Reconstruct the sequence of archeological cultures for the purpose of identifying and explaining continuities and discontinuities in the archeological record for a particular area.

**Buildings, Structures, and Objects**

While most often applied to archeological districts and sites, Criterion D can also apply to buildings, structures, and objects that contain important information. In order for these types of properties to be eligible under Criterion D, they themselves must be, or must have been, the principal source of the important information.

**Eligible**

- A building exhibiting a local variation on a standard design or construction technique can be eligible if study could yield important information, such as how local availability of materials or construction expertise affected the evolution of local building development.
Not Eligible

- The ruins of a hacienda once contained murals that have since been destroyed. Historical documentation, however, indicates that the murals were significant for their highly unusual design. The ruins cannot be eligible under Criterion D for the importance of the destroyed murals if the information is contained only in the documentation.

Association with Human Activity

A property must be associated with human activity and be critical for understanding a site's historic environment in order to be eligible under Criterion D. A property can be linked to human activity through events, processes, institutions, design, construction, settlement, migration, ideals, beliefs, lifeways, and other facets of the development or maintenance of cultural systems.

The natural environment associated with the properties was often very different from that of the present and strongly influenced cultural development. Aspects of the environment that are pertinent to human activities should be considered when evaluating properties under Criterion D.

Natural features and paleontological (floral and faunal) sites are not usually eligible under Criterion D in and of themselves. They can be eligible, however, if they are either directly related to human activity or critical to understanding a site's historic environment. In a few cases, a natural feature or site unmarked by cultural materials, that is primarily eligible under Criterion A, may also be eligible under Criterion D, if study of the feature, or its location, setting, etc. (usually in the context of data gained from other sources), will yield important information about the event or period with which it is associated.

Establishing a Historic Context

The information that a property yields, or will yield, must be evaluated within an appropriate historic context. This will entail consulting the body of information already collected from similar properties or other pertinent sources, including modern and historic written records. The researcher must be able to anticipate if and how the potential information will affect the definition of the context. The information likely to be obtained from a particular property must confirm, refute, or supplement in an important way existing information.

A property is not eligible if it cannot be related to a particular time period or cultural group and, as a result, lacks any historic context within which to evaluate the importance of the information to be gained.

Developing Research Questions

Having established the importance of the information that may be recovered, it is necessary to be explicit in demonstrating the connection between the important information and a specific property. One approach is to determine if specific important research questions can be answered by the data contained in the property. Research questions can be related to property-specific issues, to broader questions about a large geographic area, or to theoretical issues independent of any particular geographic location. These questions may be derived...
from the academic community or from preservation programs at the local, regional, State, or national level. Research questions are usually developed as part of a "research design," which specifies not only the questions to be asked, but also the types of data needed to supply the answers, and often the techniques needed to recover the data.

**Eligible**

- When a site consisting of a village occupation with midden deposits, hearths, ceramics, and stratified evidence of several occupations is being evaluated, three possible research topics could be: 1) the question of whether the site occupants were indigenous to the area prior to the time of occupation or recent arrivals, 2) the investigation of the settlement-subsistence pattern of the occupants, 3) the question of whether the region was a center for the domestication of plants. Specific questions could include: A) Do the deposits show a sequential development or sudden introduction of Ceramic Type X? B) Do the dates of the occupations fit our expectations based on the current model for the reoccupation behavior of slash-and-burn agriculturalists? C) Can any genetic changes in the food plant remains be detected?

**Not Eligible**

- A property is not eligible if so little can be understood about it that it is not possible to determine if specific important research questions can be answered by data contained in the property.

**Establishing the Presence of Adequate Data**

To support the assertion that a property has the data necessary to provide the important information, the property should be investigated with techniques sufficient to establish the presence of relevant data categories. What constitutes appropriate investigation techniques would depend upon specific circumstances including the property's location, condition, and the research questions being addressed, and could range from surface survey (or photographic survey for buildings), to the application of remote sensing techniques or intensive subsurface testing. Justification of the research potential of a property may be based on analogy to another better known property if sufficient similarities exist to establish the appropriateness of the analogy.

**Eligible**

- Data requirements depend on the specific research topics and questions to be addressed. To continue the example in "Developing Research Questions" above, we might want to ascertain the following with reference to questions A, B, and C: A) The site contains Ceramic Type X in one or more occupation levels and we expect to be able to document the local evaluation of the type or its intrusive nature. B) The hearths contain datable carbon deposits and are associated with more than one occupation. C) The midden deposits show good floral/faunal preservation, and we know enough about the physical evolution of food plants to interpret signs that suggest domestication.

**Not Eligible**

Generally, if the applicable research design requires clearly stratified deposits, then subsurface investigation techniques must be applied. A site composed only of surface materials can not be eligible for its potential to yield information that could only be found in stratified deposits.

Integrity

The assessment of integrity for properties considered for information potential depends on the data requirements of the applicable research design. A property possessing information potential does not need to recall **visually** an event, person, process, or construction technique. It is important that the significant data contained in the property remain sufficiently intact to yield the expected important information, if the appropriate study techniques are employed.

Eligible

- An irrigation system significant for the information it will yield on early engineering practices can still be eligible even though it is now filled in and no longer retains the appearance of an open canal.

Not Eligible

- A plowed archeological site contains several superimposed components that have been mixed to the extent that artifact assemblages cannot be reconstructed. The site cannot be eligible if the data requirements of the research design call for the study of artifacts specific to one component.

Partly Excavated or Disturbed Properties

The current existence of appropriate physical remains must be ascertained in considering a property's ability to yield important information. Properties that have been partly excavated or otherwise disturbed and that are being considered for their potential to yield additional important information must be shown to retain that potential in their remaining portions.

Eligible

- A site that has been partially excavated but still retains substantial intact deposits (or a site in which the remaining deposits are small but contain critical information on a topic that is not well known) is eligible.

Not Eligible

- A totally collected surface site or a completely excavated buried site is not eligible since the physical remains capable of yielding important information no longer exist at the site. (See Completely Excavated Sites, below, for exception.) Likewise, a site that has been looted or otherwise disturbed to the extent that the remaining cultural materials have lost their important depositional context (horizontal or vertical location of deposits) is not eligible.

- A reconstructed mound or other reconstructed site will generally not be considered...
eligible, because original cultural materials or context or both have been lost.

**Completely Excavated Sites**

Properties that have yielded important information in the past and that no longer retain additional research potential (such as completely excavated archeological sites) must be assessed essentially as historic sites under Criterion A. Such sites must be significant for associative values related to: 1) the importance of the data gained or 2) the impact of the property's role in the history of the development of anthropology/archeology or other relevant disciplines. Like other historic properties, the site must retain the ability to convey its association as the former repository of important information, the location of historic events, or the representative of important trends.

**Eligible**

- A property that has been excavated is eligible if the data recovered was of such importance that it influenced the direction of research in the discipline, as in a site that clearly established the antiquity of the human occupation of the New World.

**Not Eligible**

- A totally excavated site that at one time yielded important information but that no longer can convey either its historic/prehistoric utilization or significant modern investigation is not eligible.
VII. HOW TO APPLY THE CRITERIA CONSIDERATIONS

INTRODUCTION

Certain kinds of properties are not usually considered for listing in the National Register: religious properties, moved properties, birthplaces or graves, cemeteries, reconstructed properties, commemorative properties, and properties achieving significance within the past fifty years. These properties can be eligible for listing, however, if they meet special requirements, called Criteria Considerations, in addition to meeting the regular requirements (that is, being eligible under one or more of the four Criteria and possessing integrity). Part VII provides guidelines for determining which properties must meet these special requirements and for applying each Criteria Consideration.

The Criteria Considerations need to be applied only to individual properties. Components of eligible districts do not have to meet the special requirements unless they make up the majority of the district or are the focal point of the district. These are the general steps to follow when applying the Criteria Considerations to your property:

- Before looking at the Criteria Considerations, make sure your property meets one or more of the four Criteria for Evaluation and possesses integrity.
- If it does, check the Criteria Considerations (below) to see if the property is of a type that is usually excluded from the National Register. The sections that follow also list specific examples of properties of each type. If your property clearly does not fit one of these types, then it does not need to meet any special requirements.
- If your property does fit one of these types, then it must meet the special requirements stipulated for that type in the Criteria Considerations.

1. Criteria Considerations
2. Criteria Consideration A: Religious Properties
3. Criteria Consideration B: Moved Properties
4. Criteria Consideration C: Birthplaces or Graves
5. Criteria Consideration D: Cemeteries

CRITERIA CONSIDERATIONS*

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past fifty years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

a. a religious property deriving primary significance from architectural or artistic distinction or historical importance; or

b. a building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

c. a birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his or her productive life; or

d. a cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, from association with historic events; or

e. a reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

f. a property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or,

g. a property achieving significance within the past 50 years if it is of exceptional importance.

*The Criteria Considerations are taken from the Criteria for Evaluation, found in the Code of Federal Regulations, Title 36, Part 60.

CRITERIA CONSIDERATION A: RELIGIOUS PROPERTIES

A religious property is eligible if it derives its primary significance from architectural or artistic distinction or historical importance.

8/30/2005
Understanding Criteria Consideration A: Religious Properties

A religious property requires justification on architectural, artistic, or historic grounds to avoid any appearance of judgment by government about the validity of any religion or belief. Historic significance for a religious property cannot be established on the merits of a religious doctrine, but rather, for architectural or artistic values or for important historic or cultural forces that the property represents. A religious property's significance under Criterion A, B, C, or D must be judged in purely secular terms. A religious group may, in some cases, be considered a cultural group whose activities are significant in areas broader than religious history.

Examples of Properties that MUST Meet Criteria Consideration A: Religious Properties

- A historic church where an important non-religious event occurred, such as a speech by Patrick Henry.
- A historic synagogue that is significant for architecture.
- A private residence is the site of a meeting important to religious history.
- A commercial block that is currently owned as an investment property by a religious institution.
- A historic district in which religion was either a predominant or significant function during the period of significance.

Example of Properties that DO NOT Need to Meet Criteria Consideration A: Religious Properties

- A residential or commercial district that currently contains a small number of churches that are not a predominant feature of the district.
- A town meeting hall that serves as the center of community activity and houses a wide variety of public and private meetings, including religious service. The resource is significant for architecture and politics, and the religious function is incidental.
- A town hall, significant for politics from 1875 to 1925, that housed religious services during the 1950s. Since the religious function occurred after the Period of Significance, the Criteria Consideration does not apply.

Criteria Consideration for Religious Properties applies:

- If the resource was constructed by a religious institution.
- If the resource is presently owned by a religious institution or is used for religious purposes.
- If the resource was owned by a religious institution or used for religious purposes during its Period of Significance.
• If Religion is selected as an Area of Significance.

**Applying Criteria Consideration A: Religious Properties**

**Eligibility for Historic Events**

A religious property can be eligible under Criterion A for any of three reasons:

- It is significant under a theme in the history of religion having secular scholarly recognition; or
- It is significant under another historical theme, such as exploration, settlement, social philanthropy, or education; or
- It is significantly associated with traditional cultural values.

**Religious History**

A religious property can be eligible if it is directly associated with either a specific event or a broad pattern in the history of religion.

**Eligible**

- The site of a convention at which a significant denominational split occurred meets the requirements of Criteria Consideration A. Also eligible is a property that illustrates the broad impact of a religious institution on the history of a local area.

**Not Eligible**

- A religious property cannot be eligible simply because was the place of religious services for a community, or was the oldest structure used by a religious group in a local area.

**Other Historical Themes**

A religious property can be eligible if it is directly associated with either a specific event or a broad pattern that is significant in another historic context. A religious property would also qualify if it were significant for its associations that illustrate the importance of a particular religious group in the social, cultural, economic, or political history of the area. Eligibility depends on the importance of the event or broad pattern and the role of the specific property.

**Eligible**

- A religious property can qualify for its important role as a temporary hospital during the Revolutionary War, or if its school was significant in the history of education in the community.

**Not Eligible**
134

- A religious property is not significant in the history of education in a community simply because it had occasionally served as a school.

**Traditional Cultural Values**

When evaluating properties associated with traditional cultures, it is important to recognize that often these cultures do not make clear distinctions between what is secular and what is sacred. Criteria Consideration A is not intended to exclude traditional cultural resources merely because they have religious uses or are considered sacred. A property or natural feature important to a traditional culture's religion and mythology is eligible if its importance has been ethnohistorically documented and if the site can be clearly defined. It is critical, however, that the activities be documented and that the associations not be so diffuse that the physical resource cannot be adequately defined. *(For more information on applying Criteria Consideration A to traditional cultural properties, refer to National Register Bulletin: Guidelines for Evaluating and Documenting Traditional Cultural Properties.)*

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**Eligible**

- A specific location or natural feature that an Indian tribe believes to be its place of origin and that is adequately documented qualifies under Criteria Consideration A.

**Eligibility for Historic Persons**

A religious property can be eligible for association with a person important in religious history, if that significance has scholarly, secular recognition or is important in other historic contexts. Individuals who would likely be considered significant are those who formed or significantly influenced an important religious institution or movement, or who were important in the social, economic, or political history of the area. Properties associated with individuals important only within the context of a single congregation and lacking importance in any other historic context would not be eligible under Criterion B.

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**Eligible**

- A religious property strongly associated with a religious leader, such as George Whitefield or Joseph Smith, is eligible.

**Eligibility for Architectural or Artistic Distinction**

A religious property significant for its architectural design or construction should be evaluated as are other properties under Criterion C; that is, it should be evaluated within an established architectural context and, if necessary, compared to other properties of its type, period, or method of construction. *(See "Comparing Related Properties" in Part V: How to Evaluate a Property Within Its Historic Context.)*

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**Eligible**

- A historic camp meeting district that meets the requirements of Criterion C for its significance as a type of construction is eligible.

**Eligibility for Information Potential**


8/30/2005
A religious property, whether a district, site, building, structure, or object, is eligible if it can yield important information about the religious practices of a cultural group or other historic themes. This kind of property should be evaluated as are other properties under Criterion D, in relation to similar properties, other information sources, and existing data gaps.

Eligible

- A 19th century camp meeting site that could provide information about the length and intensity of site use during revivals of the Second Great Awakening is eligible.

- Rock cairns or medicine wheels that had a historic religious mythological function and can provide information about specific cultural beliefs are eligible.

Ability to Reflect Historic Associations

As with all eligible properties, religious properties must physically represent the period of time for which they are significance. For instance, a recent building that houses an older congregation cannot qualify based on the historic activities of the group because the current building does not convey the earlier history. Likewise, an older building that housed the historic activities of the congregation is eligible if it still physically represents the period of the congregation's significance. However, if an older building has been remodeled to the extent that its appearance dates from the time of the remodeling, it can only be eligible if the period of significance corresponds with the period of the alterations.

Eligible

- A church built in the 18th century and altered beyond recognition in the 19th century is eligible only if the additions are important in themselves as an example of late 19th century architecture or as a reflection of an important period of the congregation's growth.

Not Eligible

- A synagogue built in the 1920s cannot be eligible for the important activities of its congregation in the 18th and 19th centuries. It can only be eligible for significance obtained after its construction date.

- A rural 19th century frame church recently sheathed in brick is not eligible because it has lost its characteristic appearance and therefore can no longer convey its 19th century significance, either for architectural value or historic association.

CRITERIA CONSIDERATION B: MOVED PROPERTIES

A property removed from its original or historically significant location can be eligible if it is significant primarily for architectural value or it is the surviving property most importantly associated with a historic person or event.

Understanding Criteria Consideration B: Moved Properties

The National Register criteria limit the consideration of moved properties because significance is embodied in locations and settings as well as in the properties themselves. Moving a property destroys the relationships between the property and its surroundings and destroys associations with historic events and persons. A move may also cause the loss of historic features such as landscaping, foundations, and chimneys, as well as loss of the potential for associated archeological deposits. Properties that were moved before their period of significance do not need to meet the special requirements of Criteria Consideration B.

One of the basic purposes of the National Register is to encourage the preservation of historic properties as living parts of their communities. In keeping with this purpose, it is not usual to list artificial groupings of buildings that have been created for purposes of interpretation, protection, or maintenance. Moving buildings to such a grouping destroys the integrity of location and setting, and can create a false sense of historic development.

Applying Criteria Consideration B: Moved Properties

Eligibility for Architectural Value

A moved property significant under Criterion C must retain enough historic features to convey its architectural values and retain integrity of design, materials, workmanship, feeling, and association.

Examples of Properties that MUST Meet Criteria Consideration B: Moved Properties

- A resource moved from one location on its original site to another location on the property, during or after its Period of Significance.
- A district in which a significant number of resources have been moved from their original location.
- A district which has one moved building that makes an especially significant contribution to the district.
- A portable resource, such as a ship or railroad car, that is relocated to a place incompatible with its original function.
- A portable resource, such as a ship or railroad car, whose importance is critically linked to its historic location or route and that is moved.

Examples of Properties that DO NOT Need to Meet Criteria Consideration B: Moved Properties

- A property that is moved prior to its Period of Significance.
- A district in which only a small percentage of typical buildings in a district are moved.
- A moved building that is part of a complex but is of less significance than the
remaining (unmoved) buildings.

- A portable resource, such as a ship or railroad car, that is eligible under Criterion C and is moved within its natural setting (water, rails, etc.).

- A property that is raised or lowered on its foundations.

Eligibility for Historic Associations

A moved property significant under Criteria A or B must be demonstrated to be the surviving property most importantly associated with a particular historic event or an important aspect of a historic person's life. The phrase "most importantly associated" means that it must be the single surviving property that is most closely associated with the event or with the part of the person's life for which he or she is significant.

Eligible

- A moved building occupied by an business woman during the majority of her productive career would be eligible if the other extant properties are a house she briefly inhabited prior to her period of significance and a commercial building she owned after her retirement.

Not Eligible

- A moved building associated with the beginning of rail transportation in a community is not eligible if the original railroad station and warehouse remained intact on their original sites.

Setting and Environment

In addition to the requirements above, moved properties must still have an orientation, setting, and general environment that are comparable to those of the historic location and that are compatible with the property's significance.

Eligible

- A property significant as an example of mid-19th century rural house type can be eligible after a move, provided that it is placed on a lot that is sufficient in size and character to recall the basic qualities of the historic environment and setting, and provided that the building is sited appropriately in relation to natural and manmade surroundings.

Not Eligible

- A rural house that is moved into an urban area and a bridge that is no longer situated over a waterway are not eligible.

Association Dependent on the Site

For a property whose design values or historical associations are directly dependent on its
location, any move will cause the property to lose its integrity and prevent it from conveying its significance.

**Eligible**

- A farm structure significant only as an example of a method of construction peculiar to the local area is still eligible if it is moved within that local area and the new setting is similar to that of the original location.

**Not Eligible**

- A 19th century rural residence that was designed around particular topographic features, reflecting that time period's ideals of environment, is not eligible if moved.

**Properties Designed to Be Moved**

A property designed to move or a property frequently moved during its historic use must be located in a historically appropriate setting in order to qualify, retaining its integrity of setting, design, feeling, and association. Such properties include automobiles, railroad cars and engines.

**Eligible**

- A ship docked in a harbor, a locomotive on tracks or in a railyard, and a bridge relocated from one body of water to another are eligible.

**Not Eligible**

- A ship on land in a park, a bridge placed in a pasture, or a locomotive displayed in an indoor museum are not eligible.

**Artificially Created Groupings**

An artificially created grouping of buildings, structures, or objects is not eligible unless it has achieved significance since the time of its assemblage. It cannot be considered as a reflection of the time period when the individual buildings were constructed.

**Eligible**

- A grouping of moved historic buildings whose creation marked the beginning of a major concern with past lifestyles can qualify as an early attempt at historic preservation and as an illustration of that generation's values.

**Not Eligible**

- A rural district composed of a farmhouse on its original site and a grouping of historic barns recently moved onto the property is not eligible.

**Portions of Properties**

A moved portion of a building, structure, or object is not eligible because, as a fragment of a larger resource, it has lost integrity of design, setting, materials, workmanship, and location.

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**CRITERIA CONSIDERATION C: BIRTHPLACES OR GRAVES**

A birthplace or grave of a historical figure is eligible if the person is of outstanding importance and if there is no other appropriate site or building directly associated with his or her productive life.

**Understanding Criteria Consideration C: Birthplaces or Graves**

Birthplaces or graves often attain importance as reflections of the origins of important persons or as lasting memorials to them. The lives of persons significant in our past normally are recognized by the National Register through listing of properties illustrative of or associated with that person’s productive life’s work. Birthplaces or graves, as properties that represent the beginning and the end of the life of distinguished individuals, may be temporally and geographically far removed from the person’s significant activities, and therefore are not usually considered eligible.

**Examples of Properties that MUST Meet Criteria Consideration C: Birthplaces or Graves**

- The birthplace of a significant person who lived elsewhere during his or her Period of Significance.

- A grave that is nominated for its association with the significant person buried in it.

- A grave that is nominated for information potential.

**Examples of Properties that DO NOT Need to Meet Criteria Consideration C: Birthplaces or Graves**

- A house that was inhabited by a significant person for his or her entire lifetime.

- A grave located on the grounds of the house where a significant person spent his or her productive years.

**Applying Criteria Consideration C: Birthplaces and Graves**

**Persons of Outstanding Importance**

The phrase "a historical figure of outstanding importance" means that in order for a birthplace or grave to qualify, it cannot be simply the birthplace or grave of a person significant in our past (Criterion B). It must be the birthplace or grave of an individual who was of outstanding importance in the history of the local area, State, or nation. The birthplace or grave of an individual who was one of several people active in some aspect of the history of a community, a state, or the Nation would not be eligible.
Last Surviving Property Associated with a Person

When an geographical area strongly associated with a person of outstanding importance has lost all other properties directly associated with his or her formative years or productive life, a birthplace or grave may be eligible.

Eligibility for Other Associations

A birthplace or grave can also be eligible if it is significant for reasons other than association with the productive life of the person in question. It can be eligible for significance under Criterion A for association with important events, under Criterion B for association with the productive lives of other important persons, or under Criterion C for architectural significance. A birthplace or grave can also be eligible in rare cases if, after the passage of time, it is significant for its commemorative value. (See Criteria Consideration F for a discussion of commemorative properties.) A birthplace or grave can also be eligible under Criterion D if it contains important information on research, e.g., demography, pathology, mortuary practices, or socioeconomic status differentiation.

CRITERIA CONSIDERATION D: CEMETERIES

A cemetery is eligible if it derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events.

Understanding Criteria Consideration D: Cemeteries

A cemetery is a collection of graves that is marked by stones or other artifacts or that is unmarked but recognizable by features such as fencing or depressions, or through maps, or by means of testing. Cemeteries serve as a primary means of an individual's recognition of family history and as expressions of collective religious and/or ethnic identity. Because cemeteries may embody values beyond personal or family-specific emotions, the National Register criteria allow for listing of cemeteries under certain conditions.

Examples of Properties that MUST Meet Criteria Consideration D: Cemeteries

- A cemetery that is nominated individually for Criterion A, B, or C.

Examples of Properties that DO NOT Need to Meet Criteria Consideration D: Cemeteries

- A cemetery that is nominated along with its associated church, but the church is the main resource nominated.

- A cemetery that is nominated under Criterion D for information potential.

- A cemetery that is nominated as part of a district but is not the focal point of the district.
Applying Criteria Consideration D: Cemeteries

Persons of Transcendent Importance

A cemetery containing the graves of persons of transcendent importance may be eligible. To be of transcendent importance the persons must have been of great eminence in their fields of endeavor or had a great impact upon the history of their community, State, or nation. (A single grave that is the burial place of an important person and is located in a larger cemetery that does not qualify under this Criteria Consideration should be treated under Criteria Consideration C: Birthplaces and Graves.)

Eligible

- A historic cemetery containing the graves of a number of persons who were exceptionally significant in determining the course of a State's political or economic history during a particular period is eligible.

Not Eligible

- A cemetery containing graves of State legislators is not eligible if they simply performed the daily business of State government and did not have an outstanding impact upon the nature and direction of the State's history.

Eligibility on the Basis of Age

Cemeteries can be eligible if they have achieved historic significance for their relative great age in a particular geographic or cultural context.

Eligible

- A cemetery dating from a community's original 1830s settlement can attain significance from its association with that very early period.

Eligibility for Design

Cemeteries can qualify on the basis of distinctive design values. These values refer to the same design values addressed in Criterion C and can include aesthetic or technological achievement in the fields of city planning, architecture, landscape architecture, engineering, mortuary art, and sculpture. As for all other nominated properties, a cemetery must clearly express its design values and be able to convey its historic appearance.

Eligible

- A Victorian cemetery is eligible if it clearly expresses the aesthetic principles related to funerary design for that period, through such features as the overall plan, landscaping, statuary, sculpture, fencing, buildings, and grave markers.

Not Eligible

- A cemetery cannot be eligible for design values if it no longer conveys its historic
Eligibility for Association with Events

Cemeteries may be associated with historic events including specific important events or general events that illustrate broad patterns.

Eligible

- A cemetery associated with an important Civil War battle is eligible.

- A cemetery associated with the settlement of an area by an ethnic or cultural group is eligible if the movement of the group into the area had an important impact, if other properties associated with that group are rare, and if few documentary sources have survived to provide information about the group's history.

Not Eligible

- A cemetery associated with a battle in the Civil War does not qualify if the battle was not important in the history of the war.

- A cemetery associated with an area's settlement by an ethnic or cultural group is not eligible if the impact of the group on the area cannot be established, if other extant historic properties better convey association with the group, or if the information that the cemetery can impart is available in documentary sources.

Eligibility for Information Potential

Cemeteries, both historic and prehistoric, can be eligible if they have the potential to yield important information. The information must be important within a specific context and the potential to yield information must be demonstrated.

A cemetery can qualify if it has potential to yield important information provided that the information it contains is not available in extant documentary evidence.

Eligible

- A cemetery associated with the settlement of a particular cultural group will qualify if it has the potential to yield important information about subjects such as demography, variations in mortuary practices, or the study of the cause of death correlated with nutrition or other variables.

Integrity

Assessing the integrity of a historic cemetery entails evaluating principal design features such as plan, grave markers, and any related elements (such as fencing). Only that portion of a historic cemetery that retains its historic integrity can be eligible. If the overall integrity has been lost because of the number and size of recent grave markers, some features such as buildings, structures, or objects that retain integrity may be considered as individual properties if they are of such historic or artistic importance that they individually meet one...
or more of the requirements listed above.

National Cemeteries

National Cemeteries administered by the Veterans Administration are eligible because they have been designated by Congress as primary memorials to the military history of the United States. Those areas within a designated national cemetery that have been used or prepared for the reception of the remains of veterans and their dependents, as well as any landscaped areas that immediately surround the graves may qualify. Because these cemeteries draw their significance from the presence of the remains of military personnel who have served the country throughout its history, the age of the cemetery is not a factor in judging eligibility, although integrity must be present.

A national cemetery or a portion of a national cemetery that has only been set aside for use in the future is not eligible.

CRITERIA CONSIDERATION E: RECONSTRUCTED PROPERTIES

A reconstructed property is eligible when it is accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan and when no other building or structure with the same associations has survived. All three of these requirements must be met.

Understanding Criteria Consideration E: Reconstructed Properties

"Reconstruction" is defined as the reproduction of the exact form and detail of a vanished building, structure, object, or a part thereof, as it appeared at a specific period of time. Reconstructed buildings fall into two categories: buildings wholly constructed of new materials and buildings reassembled from some historic and some new materials. Both categories of properties present problems in meeting the integrity requirements of the National Register criteria.

Examples of Properties that MUST Meet Criteria Consideration E: Reconstructed Properties

- A property in which most or all of the fabric is not original.
- A district in which an important resource or a significant number of resources are reconstructions.

Examples of Properties that DO NOT Need to Meet Criteria Consideration E: Reconstructed Properties

- A property that is remodeled or renovated and still has the majority of its original fabric.

Applying Criteria Consideration E: Reconstructed Properties

Accuracy of the Reconstruction

The phrase "accurately executed" means that the reconstruction must be based upon sound archeological, architectural, and historic data concerning the historic construction and appearance of the resource. That documentation should include both analysis of any above or below ground material and research in written and other records.

**Suitable Environment**

The phrase "suitable environment" refers to: 1) the physical context provided by the historic district and 2) any interpretive scheme, if the historic district is used for interpretive purposes. This means that the reconstructed property must be located at the same site as the original. It must also be situated in its original grouping of buildings, structures, and objects (as many as are extant), and that grouping must retain integrity. In addition, the reconstruction must not be misrepresented as an authentic historic property.

**Eligible**

- A reconstructed plantation manager's office building is considered eligible because it is located at its historic site, grouped with the remaining historic plantation buildings and structures, and the plantation as a whole retains integrity. Interpretation of the plantation district includes an explanation that the manager's office is not the original building, but a reconstruction.

**Not Eligible**

- The same reconstructed plantation manager's office building would not qualify if it were rebuilt at a location different from that of the original building, or if the district as a whole no longer reflected the period for which it is significant, or if a misleading interpretive scheme were used for the district or for the reconstruction itself.

**Restoration Master Plans**

Being presented "as part of a restoration master plan" means that: 1) a reconstructed property is an essential component in a historic district and 2) the reconstruction is part of an overall restoration plan for an entire district. "Restoration" is defined as accurately recovering the form and details of a property and its setting as it appeared at a particular period by removing later work or by replacing missing earlier work (as opposed to completely rebuilding the property). The master plan for the entire property must emphasize restoration, not reconstruction. In other words, the master plan for the entire resource would not be acceptable under this consideration if it called for reconstruction of a majority of the resource.

**Eligible**

- A reconstructed plantation manager's office is eligible if the office were an important component of the plantation and if the reconstruction is one element in an overall plan for restoring the plantation and if no other building or structure with the same associations has survived.

- The reconstruction of the plantation manager's office building can be eligible only if the majority of buildings, structures, and objects that comprised the plantation are...
extant and are being restored. For guidance regarding restoration see the *Secretary of the Interior's Standards for Historic Preservation Projects*.

**Last Surviving Property of a Type**

This consideration also stipulates that a reconstruction can qualify if, in addition to the other requirements, no other building, object, or structure with the same association has survived. A reconstruction that is part of a restoration master plan is appropriate only if: 1) the property is the only one in the district with which a particular important activity or event has been historically associated or 2) no other property with the same associative values has survived.

**Reconstructions Older than Fifty Years**

After the passage of fifty years, a reconstruction may its own attain significance for what it reveals about the period in which it was built, rather than the historic period it was intended to depict. On that basis, a reconstruction can possibly qualify under any of the Criteria.

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**CRITERIA CONSIDERATION F: COMMEMORATIVE PROPERTIES**

A property primarily commemorative in intent can be eligible if design, age, tradition, or symbolic value has invested it with its own historical significance.

*Understanding Criteria Consideration F: Commemorative Properties*

Commemorative properties are designed or constructed after the occurrence of an important historic event or after the life of an important person. They are not directly associated with the event or with the person's productive life, but serve as evidence of a later generation's assessment of the past. Their significance comes from their value as cultural expressions at the date of their creation. Therefore, a commemorative property generally must be over fifty years old and must possess significance based on its own value, not on the value of the event or person being memorialized.

*Examples of Properties that MUST Meet Criteria Consideration F: Commemorative Properties*

- A property whose sole or primary function is commemorative or in which the commemorative function is of primary significance.

*Examples of Properties that DO NOT Need to Meet Criteria Consideration F: Commemorative Properties*

- A resource that has a non-commemorative primary function or significance.
- A single marker that is a component of a district (whether contributing or non-contributing).
Applying Criteria Consideration F: Commemorative Properties

Eligibility for Design

A commemorative property derives its design from the aesthetic values of the period of its creation. A commemorative property, therefore, may be significant for the architectural, artistic, or other design qualities of its own period in prehistory or history.

Eligible

- A commemorative statue situated in a park or square is eligible if it expresses the aesthetics or craftsmanship of the period when it was made, meeting Criterion C.

- A late 19th century statue erected on a courthouse square to commemorate Civil War veterans would qualify if it reflects that era's shared perception of the noble character and valor of the veterans and their cause. This was commonly conveyed by portraying idealized soldiers or allegorical figures of battle, victory, or sacrifice.

Eligibility for Age, Tradition, or Symbolic Value

A commemorative property cannot qualify for association with the event or person it memorializes. A commemorative property may, however, acquire significance after the time of its creation through age, tradition, or symbolic value. This significance must be documented by accepted methods of historical research, including written or oral history, and must meet one or more of the Criteria.

Eligible

- A commemorative marker erected by a cultural group that believed the place was the site of its origins is eligible if, for subsequent generations of the group, the marker itself became the focus of traditional association with the group's historic identity.

- A building erected as a monument to an important historical figure will qualify if through the passage of time the property itself has come to symbolize the value placed upon the individual and is widely recognized as a reminder of enduring principles or contributions valued by the generation that erected the monument.

- A commemorative marker erected early in the settlement or development of an area will qualify if it is demonstrated that, because of its relative great age, the property has long been a part of the historic identity of the area.

Not Eligible

- A commemorative marker erected in the past by a cultural group at the site of an event in its history would not be eligible if the marker were significant only for association with the event, and it had not become significant itself through tradition.

- A building erected as a monument to an important historical figure would not be eligible if its only value lay in its association with the individual, and it has not come to symbolize values, ideas, or contributions valued by the generation that erected the
monument.

- A commemorative marker erected to memorialize an event in the community's history would not qualify simply for its association with the event it memorialized.

Ineligibility as the Last Representative of an Event or Person

The loss of properties directly associated with a significant event or person does not strengthen the case for consideration of a commemorative property. Unlike birthplaces or graves, a commemorative property usually has no direct historic association. The commemorative property can qualify for historic association only if it is clearly significant in its own right, as stipulated above.

CRITERIA CONSIDERATION G: PROPERTIES THAT HAVE ACHIEVED SIGNIFICANCE WITHIN THE PAST FIFTY YEARS

A property achieving significance within the past fifty years is eligible if it is of exceptional importance.

(For more information on Criteria Consideration G, refer to National Register Bulletin: Guidelines for Evaluating and Nominating Properties that Have Achieved Significance Within the Past Fifty Years.)

Understanding Criteria Consideration G: Properties that Have Achieved Significance Within the Past Fifty Years

The National Register Criteria for Evaluation exclude properties that achieved significance within the past fifty years unless they are of exceptional importance. Fifty years is a general estimate of the time needed to develop historical perspective and to evaluate significance. This consideration guards against the listing of properties of passing contemporary interest and ensures that the National Register is a list of truly historic places.

Examples of Properties that MUST Meet Criteria Consideration G: Properties that Have Achieved Significance Within the Past Fifty Years

- A property that is less than fifty years old.

- A property that continues to achieve significance into a period less than fifty years before the nomination.

- A property that has non-contiguous Periods of Significance, one of which is less than fifty years before the nomination.

- A property that is more than fifty years old and had no significance until a period less than fifty years before the nomination.

Examples of Properties that DO NOT Need to Meet Criteria Consideration G: Properties that Have Achieved Significance Within the Past Fifty Years

A resource whose construction began over fifty years ago, but the completion overlaps the fifty year period by a few years or less.

A resource that is significant for its plan or design, which is more than fifty years old, but the actual completion of the project overlaps the fifty year period by a few years.

A historic district in which a few properties are newer than fifty years old, but the majority of properties and the most important Period of Significance are greater than fifty years old.

Applying Criteria Consideration G: Properties That Have Achieved Significance Within The Last Fifty Years

Eligibility for Exceptional Importance

The phrase "exceptional importance" may be applied to the extraordinary importance of an event or to an entire category of resources so fragile that survivors of any age are unusual. Properties listed that had attained significance in less than fifty years include: the launch pad at Cape Canaveral from which men first traveled to the moon, the home of nationally prominent playwright Eugene O'Neill, and the Chrysler Building (New York) significant as the epitome of the "Style Moderne" architecture.

Properties less than fifty years old that qualify as exceptional because the entire category of resources is fragile include a recent example of a traditional sailing canoe in the Trust Territory of the Pacific Islands, where because of rapid deterioration of materials, no working Micronesian canoes exist that are more than twenty years old. Properties that by their nature can last more than fifty years cannot be considered exceptionally important because of the fragility of the class of resources.

The phrase "exceptional importance" does not require that the property be of national significance. It is a measure of a property's importance within the appropriate historic context, whether the scale of that context is local, State, or national.

Eligible

- The General Laundry Building in New Orleans, one of the few remaining Art Deco Style buildings in that city, was listed in the National Register when it was forty years old because of its exceptional importance as an example of that architectural style.

Historical Perspective

A property that has achieved significance within the past fifty years can be evaluated only when sufficient historical perspective exists to determine that the property is exceptionally important. The necessary perspective can be provided by scholarly research and evaluation, and must consider both the historic context and the specific property's role in that context.

In many communities, properties such as apartment buildings built in the 1950s cannot be evaluated because there is no scholarly research available to provide an overview of the nature, role, and impact of that building type within the context of historical and architectural developments of the 1950s.
National Park Service Rustic Architecture

Properties such as structures built in a rustic style by the National Park Service during the 1930s and 1940s can now be evaluated because a broad study, *National Park Service Rustic Architecture* (1977), provides the context for evaluating properties of this type and style. Specific examples were listed in the National Register prior to reaching fifty years of age when documentation concerning the individual properties established their significance within the historical and architectural context of the type and style.

Veterans Administration Hospitals

Hospitals less than fifty years old that were constructed by the Veterans Bureau and Veterans Administration can be evaluated because the collection of forty-eight facilities built between 1920 and 1946 has been analyzed in a study prepared by the agency. The study provided a historic and architectural context for development of veteran's care within which hospitals could be evaluated. The exceptional importance of specific individual facilities constructed within the past fifty years could therefore be determined based on their role and their present integrity.

Comparison with Related Properties

In justifying exceptional importance, it is necessary to identify other properties within the geographical area that reflect the same significance or historic associations and to determine which properties best represent the historic context in question. Several properties in the area could become eligible with the passage of time, but few will qualify now as exceptionally important.

Post-World War II Properties

Properties associated with the post-World War II era must be identified and evaluated to determine which ones in an area could be judged exceptionally important. For example, a public housing complex may be eligible as an outstanding expression of the nation's post-war urban policy. A military installation could be judged exceptionally important because of its contribution to the Cold War arms race. A church building in a Southern city may have served as a pivotal rallying point for the city's most famous civil rights protest. A post-war suburban subdivision may be the best reflection of contemporary siting and design trends in a metropolitan area. In each case, the nomination preparer must justify the exceptional importance of the property relative to similar properties in the community, State, or nation.

Eligibility for Information Potential

A property that has achieved significance within the past fifty years can qualify under Criterion D only if it can be demonstrated that the information is of exceptional importance within the appropriate context and that the property contains data superior to or different from those obtainable from other sources, including other culturally related sites. An archeological site less than fifty years old may be eligible if the former inhabitants are so poorly documented that information about their lifeways is best obtained from examination of the material remains.
150

- Data such as the rate of adoption of modern technological innovations by rural tenant farmers in the 1950s may not be obtainable through interviews with living persons but could be gained by examination of homesites.

Not Eligible

- A recent archeological site such as the remains of a Navajo sheep corral used in the 1950s would not be considered exceptionally significant for its information potential on animal husbandry if better information on the same topic is available through ethnographic studies or living informants.

Historic Districts

Properties which have achieved significance within the past fifty years can be eligible for the National Register if they are an integral part of a district which qualifies for National Register listing. This is demonstrated by documenting that the property dates from within the district's defined Period of Significance and that it is associated with one or more of the district's defined Areas of Significance.

Properties less than fifty years old may be an integral part of a district when there is sufficient perspective to consider the properties as historic. This is accomplished by demonstrating that: 1) the district's Period of Significance is justified as a discrete period with a defined beginning and end, 2) the character of the district's historic resources is clearly defined and assessed, 3) specific resources in the district are demonstrated to date from that discrete era, and 4) the majority of district properties are over fifty years old. In these instances, it is not necessary to prove exceptional importance of either the district itself or the less-than-fifty-year-old properties. Exceptional importance still must be demonstrated for district where the majority of properties or the major Period of Significance is less than fifty years old, and for less-than-fifty-year-old properties which are nominated individually.

Properties More Than Fifty Years in Age, Less Than Fifty Years in Significance

Properties that are more than fifty years old, but whose significant associations or qualities are less than fifty years old, must be treated under the fifty year consideration.

Eligible

- A building constructed early in the twentieth century (and having no architectural importance), but that was associated with an important person during the 1950s, must be evaluated under Criteria Consideration G because the Period of Significance is within the past fifty years. Such a property would qualify if the person was of exceptional importance.

Requirement to Meet the Criteria, Regardless of Age

Properties that are less than fifty years old and are not exceptionally important will not automatically qualify for the National Register once they are fifty years old. In order to be listed in the National Register, all properties, regardless of age, must be demonstrated to meet the Criteria for Evaluation.
VIII. HOW TO EVALUATE THE INTEGRITY OF A PROPERTY

Integrity is the ability of a property to convey its significance. To be listed in the National Register of Historic Places, a property must not only be shown to be significant under the National Register criteria, but it also must have integrity. The evaluation of integrity is sometimes a subjective judgment, but it must always be grounded in an understanding of a property's physical features and how they relate to its significance.

Historic properties either retain integrity (this is, convey their significance) or they do not. Within the concept of integrity, the National Register criteria recognizes seven aspects or qualities that, in various combinations, define integrity.

To retain historic integrity a property will always possess several, and usually most, of the aspects. The retention of specific aspects of integrity is paramount for a property to convey its significance. Determining which of these aspects are most important to a particular property requires knowing why, where, and when the property is significant. The following sections define the seven aspects and explain how they combine to produce integrity.

1. Seven Aspects of Integrity

2. Assessing Integrity in Properties
   - Defining the Essential Physical Features
   - Visibility of the Physical Features
   - Comparing Similar Properties
   - Determining the Relevant Aspects of Integrity

SEVEN ASPECTS OF INTEGRITY

- Location
Understanding the Aspects of Integrity

Location

Location is the place where the historic property was constructed or the place where the historic event occurred. The relationship between the property and its location is often important to understanding why the property was created or why something happened. The actual location of a historic property, complemented by its setting, is particularly important in recapturing the sense of historic events and persons. Except in rare cases, the relationship between a property and its historic associations is destroyed if the property is moved. (See Criteria Consideration B in Part VII: How to Apply the Criteria Considerations, for the conditions under which a moved property can be eligible.)

Design

Design is the combination of elements that create the form, plan, space, structure, and style of a property. It results from conscious decisions made during the original conception and planning of a property (or its significant alteration) and applies to activities as diverse as community planning, engineering, architecture, and landscape architecture. Design includes such elements as organization of space, proportion, scale, technology, ornamentation, and materials.

A property's design reflects historic functions and technologies as well as aesthetics. It includes such considerations as the structural system; massing; arrangement of spaces; pattern of fenestration; textures and colors of surface materials; type, amount, and style of ornamental detailing; and arrangement and type of plantings in a designed landscape.

Design can also apply to districts, whether they are important primarily for historic association, architectural value, information potential, or a combination thereof. For districts significant primarily for historic association or architectural value, design concerns more than just the individual buildings or structures located within the boundaries. It also applies to the way in which buildings, sites, or structures are related: for example, spatial relationships between major features; visual rhythms in a streetscape or landscape plantings; the layout and materials of walkways and roads; and the relationship of other features, such as statues, water fountains, and archeological sites.

Setting
Setting is the physical environment of a historic property. Whereas location refers to the specific place where a property was built or an event occurred, setting refers to the character of the place in which the property played its historical role. It involves how, not just where, the property is situated and its relationship to surrounding features and open space.

Setting often reflects the basic physical conditions under which a property was built and the functions it was intended to serve. In addition, the way in which a property is positioned in its environment can reflect the designer's concept of nature and aesthetic preferences.

The physical features that constitute the setting of a historic property can be either natural or manmade, including such elements as:

- Topographic features (a gorge or the crest of a hill);
- Vegetation;
- Simple manmade features (paths or fences); and
- Relationships between buildings and other features or open space.

These features and their relationships should be examined not only within the exact boundaries of the property, but also between the property and its surroundings. This is particularly important for districts.

Materials

Materials are the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic property. The choice and combination of materials reveal the preferences of those who created the property and indicate the availability of particular types of materials and technologies. Indigenous materials are often the focus of regional building traditions and thereby help define an area's sense of time and place.

A property must retain the key exterior materials dating from the period of its historic significance. If the property has been rehabilitated, the historic materials and significant features must have been preserved. The property must also be an actual historic resource, not a recreation; a recent structure fabricated to look historic is not eligible. Likewise, a property whose historic features and materials have been lost and then reconstructed is usually not eligible. (See Criteria Consideration E in Part VII: How to Apply the Criteria Considerations for the conditions under which a reconstructed property can be eligible.)

Workmanship

Workmanship is the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory. It is the evidence of artisans' labor and skill in constructing or altering a building, structure, object, or site. Workmanship can apply to the property as a whole or to its individual components. It can be expressed in vernacular methods of construction and plain finishes or in highly sophisticated configurations and ornamental detailing. It can be based on common traditions or innovative period techniques.
Workmanship is important because it can furnish evidence of the technology of a craft, illustrate the aesthetic principles of a historic or prehistoric period, and reveal individual, local, regional, or national applications of both technological practices and aesthetic principles. Examples of workmanship in historic buildings include tooling, carving, painting, graining, turning, and joinery. Examples of workmanship in prehistoric contexts include Paleo-Indian clovis projectile points; Archaic period beveled adzes; Hopewellian birdstone pipes; copper earspools and worked bone pendants; and Iroquoian effigy pipes.

Feeling

Feeling is a property's expression of the aesthetic or historic sense of a particular period of time. It results from the presence of physical features that, taken together, convey the property's historic character. For example, a rural historic district retaining original design, materials, workmanship, and setting will relate the feeling of agricultural life in the 19th century. A grouping of prehistoric petroglyphs, unmarred by graffiti and intrusions and located on its original isolated bluff, can evoke a sense of tribal spiritual life.

Association

Association is the direct link between an important historic event or person and a historic property. A property retains association if it is the place where the event or activity occurred and is sufficiently intact to convey that relationship to an observer. Like feeling, association requires the presence of physical features that convey a property's historic character. For example, a Revolutionary War battlefield whose natural and manmade elements have remained intact since the 18th century will retain its quality of association with the battle.

Because feeling and association depend on individual perceptions, their retention alone is never sufficient to support eligibility of a property for the National Register.

ASSESSING INTEGRITY IN PROPERTIES

Integrity is based on significance: why, where, and when a property is important. Only after significance is fully established can you proceed to the issue of integrity.

The steps in assessing integrity are:

• Define the essential physical features that must be present for a property to represent its significance.

• Determine whether the essential physical features are visible enough to convey their significance.

• Determine whether the property needs to be compared with similar properties. And,

• Determine, based on the significance and essential physical features, which aspects of integrity are particularly vital to the property being nominated and if they are present.

Ultimately, the question of integrity is answered by whether or not the property retains the identity for which it is significant.

DEFINING THE ESSENTIAL PHYSICAL FEATURES

All properties change over time. It is not necessary for a property to retain all its historic physical features or characteristics. The property must retain, however, the essential physical features that enable it to convey its historic identity. The essential physical features are those features that define both why a property is significant (Applicable Criteria and Areas of Significance) and when it was significant (Periods of Significance). They are the features without which a property can no longer be identified as, for instance, a late 19th century dairy barn or an early 20th century commercial district.

Criteria A and B

A property that is significant for its historic association is eligible if it retains the essential physical features that made up its character or appearance during the period of its association with the important event, historical pattern, or person(s). If the property is a site (such as a treaty site) where there are no material cultural remains, the setting must be intact.

Archeological sites eligible under Criteria A and B must be in overall good condition with excellent preservation of features, artifacts, and spatial relationships to the extent that these remains are able to convey important associations with events or persons.

Criterion C

A property important for illustrating a particular architectural style or construction technique must retain most of the physical features that constitute that style or technique. A property that has lost some historic materials or details can be eligible if it retains the majority of the features that illustrate its style in terms of the massing, spatial relationships, proportion, pattern of windows and doors, texture of materials, and ornamentation. The property is not eligible, however, if it retains some basic features conveying massing but has lost the majority of the features that once characterized its style.

Archeological sites eligible under Criterion C must be in overall good condition with excellent preservation of features, artifacts, and spatial relationships to the extent that these remains are able to illustrate a site type, time period, method of construction, or work of a master.

Criterion D

For properties eligible under Criterion D, including archeological sites and standing structures studied for their information potential, less attention is given to their overall condition, than it they were being considered under Criteria A, B, or C. Archeological sites, in particular, do not exist today exactly as they were formed. There are always cultural and natural processes that alter the deposited materials and their spatial relationships.
156

For properties eligible under Criterion D, integrity is based upon the property's potential to yield specific data that addresses important research questions, such as those identified in the historic context documentation in the Statewide Comprehensive Preservation Plan or in the research design for projects meeting the Secretary of the Interior's Standards for Archeological Documentation.

Interiors

Some historic buildings are virtually defined by their exteriors, and their contribution to the built environment can be appreciated even if their interiors are not accessible. Examples of this would include early examples of steel-framed skyscraper construction. The great advance in American technology and engineering made by these buildings can be read from the outside. The change in American popular taste during the 19th century, from the symmetry and simplicity of architectural styles based on classical precedents, to the expressions of High Victorian styles, with their combination of textures, colors, and asymmetrical forms, is readily apparent from the exteriors of these buildings.

Other buildings "are" interiors. The Cleveland Arcade, that soaring 19th century glass-covered shopping area, can only be appreciated from the inside. Other buildings in this category would be the great covered train sheds of the 19th century.

In some cases the loss of an interior will disqualify properties from listing in the National Register—a historic concert hall noted for the beauty of its auditorium and its fine acoustic qualities would be the type of property that if it were to lose its interior, it would lose its value as a historic resource. In other cases, the overarching significance of a property's exterior can overcome the adverse effect of the loss of an interior.

In borderline cases particular attention is paid to the significance of the property and the remaining historic features.

Historic Districts

For a district to retain integrity as a whole, the majority of the components that make up the district's historic character must possess integrity even if they are individually undistinguished. In addition, the relationships among the district's components must be substantially unchanged since the period of significance.

When evaluating the impact of intrusions upon the district's integrity, take into consideration the relative number, size, scale, design, and location of the components that do not contribute to the significance. A district is not eligible if it contains so many alterations or new intrusions that it no longer conveys the sense of a historic environment.

A component of a district cannot contribute to the significance if:

• it has been substantially altered since the period of the district's significance or
• it does not share the historic associations of the district.
VISIBILITY OF PHYSICAL FEATURES

Properties eligible under Criteria A, B, and C must not only retain their essential physical features, but the features must be visible enough to convey their significance. This means that even if a property is physically intact, its integrity is questionable if its significant features are concealed under modern construction. Archaeological properties are often the exception to this; by nature they usually do not require visible features to convey their significance.

Non-Historic Exteriors

If the historic exterior building material is covered by non-historic material (such as modern siding), the property can still be eligible if the significant form, features, and detailing are not obscured. If a property's exterior is covered by a non-historic false-front or curtain wall, the property will not qualify under Criteria A, B, or C, because it does not retain the visual quality necessary to convey historic or architectural significance. Such a property also cannot be considered a contributing element in a historic district, because it does not add to the district's sense of time and place. If the false front, curtain wall, or non-historic siding is removed and the original building materials are intact, then the property's integrity can be re-evaluated.

Property Contained within Another Property

Some properties contain an earlier structure that formed the nucleus for later construction. The exterior property, if not eligible in its own right, can qualify on the basis of the interior property only if the interior property can yield significant information about a specific construction technique or material, such as rammed earth or tabby. The interior property cannot be used as the basis for eligibility if it has been so altered that it no longer contains the features that could provide important information, or if the presence of important information cannot be demonstrated.

Sunken Vessels

A sunken vessel can be eligible under Criterion C as embodying the distinctive characteristics of a method of construction if it is structurally intact. A deteriorated sunken vessel, no longer structurally intact, can be eligible under Criterion D if the remains of either the vessel or its contents is capable of yielding significant information. For further information, refer to National Register Bulletin: Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places.

Natural Features

A natural feature that is associated with a historic event or trend, such as a rock formation that served as a trail marker during westward expansion, must retain its historic appearance, unobscured by modern construction or landfill. Otherwise it is not eligible, even though it remains intact.
COMPARING SIMILAR PROPERTIES

For some properties, comparison with similar properties should be considered during the evaluation of integrity. Such comparison may be important in deciding what physical features are essential to properties of that type. In instances where it has not been determined what physical features a property must possess in order for it to reflect the significance of a historic context, comparison with similar properties should be undertaken during the evaluation of integrity. This situation arises when scholarly work has not been done on a particular property type or when surviving examples of a property type are extremely rare. (See Comparing Related Properties in Part V: How to Evaluate a Property within its Historic Context.)

Rare Examples of a Property Type

Comparative information is particularly important to consider when evaluating the integrity of a property that is a rare surviving example of its type. The property must have the essential physical features that enable it to convey its historic character or information. The rarity and poor condition, however, of other extant examples of the type may justify accepting a greater degree of alteration or fewer features, provided that enough of the property survives for it to be a significant resource.

**Eligible**

- A one-room schoolhouse that has had all original exterior siding replaced and a replacement roof that does not exactly replicate the original roof profile can be eligible if the other extant rare examples have received an even greater degree of alteration, such as the subdivision of the original one-room plan.

**Not Eligible**

- A mill site contains information on how site patterning reflects historic functional requirements, but parts of the site have been destroyed. The site is not eligible for its information potential if a comparison of other mill sites reveals more intact properties with complete information.

DETERMINING THE RELEVANT ASPECTS OF INTEGRITY

Each type of property depends on certain aspects of integrity, more than others, to express its historic significance. Determining which of the aspects is most important to a particular property requires an understanding of the property's significance and its essential physical features.

**Criteria A and B**

A property important for association with an event, historical pattern, or person(s) ideally might retain some features of all seven aspects of integrity: location, design, setting,
materials, workmanship, feeling, and association. Integrity of design and workmanship, however, might not be as important to the significance, and would not be relevant if the property were a site. A basic integrity test for a property associated with an important event or person is whether a historical contemporary would recognize the property as it exists today.

For archeological sites that are eligible under Criteria A and B, the seven aspects of integrity can be applied in much the same way as they are to buildings, structures, or objects. It is important to note, however, that the site must have demonstrated its ability to convey its significance, as opposed to sites eligible under Criterion D where only the potential to yield information is required.

**Eligible**

A mid-19th century waterpowered mill important for its association with an area's industrial development is eligible if:

- it is still on its original site (*Location*), and
- the important features of its setting are intact (*Setting*), and
- it retains most of its historic materials (*Materials*), and
- it has the basic features expressive of its design and function, such as configuration, proportions, and window pattern (*Design*).

**Not Eligible**

A mid-19th century waterpowered mill important for its association with an area's industrial development is not eligible if:

- it has been moved (*Location, Setting, Feeling, and Association*), or
- substantial amounts of new materials have been incorporated (*Materials, Workmanship, and Feeling*), or
- it no longer retains basic design features that convey its historic appearance or function (*Design, Workmanship, and Feeling*).

**Criterion C**

A property significant under Criterion C must retain those physical features that characterize the type, period, or method of construction that the property represents. Retention of design, workmanship, and materials will usually be more important than location, setting, feeling, and association. Location and setting will be important, however, for those properties whose design is a reflection of their immediate environment (such as designed landscapes and bridges).

For archeological sites that are eligible under Criterion C, the seven aspects of integrity can be applied in much the same way as they are to buildings, structures, or objects. It is
important to note, however, that the site must have demonstrated its ability to convey its significance, as opposed to sites eligible under Criterion D where only the potential to yield information is required.

**Eligible**

A 19th century wooden covered bridge, important for illustrating a construction type, is eligible if:

- the essential features of its design are intact, such as abutments, piers, roof configuration, and trusses (Design, Workmanship, and Feeling), and

- most of the historic materials are present (Materials, Workmanship, and Feeling), and

- evidence of the craft of wooden bridge technology remains, such as the form and assembly technique of the trusses (Workmanship).

- Since the design of a bridge relates directly to its function as a transportation crossing, it is also important that the bridge still be situated over a waterway (Setting, Location, Feeling, and Association).

**Not Eligible**

For a 19th century wooden covered bridge, important for its construction type, replacement of some materials of the flooring, siding, and roofing would not necessarily damage its integrity. Integrity would be lost, however, if:

- the abutments, piers, or trusses were substantially altered (Design, Workmanship, and Feeling) or

- considerable amounts of new materials were incorporated (Materials, Workmanship, and Feeling).

- Because environment is a strong factor in the design of this property type, the bridge would also be ineligible if it no longer stood in a place that conveyed its function as a crossing (Setting, Location, Feeling, and Association).

**Criterion D**

For properties eligible under Criterion D, setting and feeling may not have direct bearing on the property's ability to yield important information. Evaluation of integrity probably will focus primarily on the location, design, materials, and perhaps workmanship.

**Eligible**

A multicomponent prehistoric site important for yielding data on changing subsistence patterns can be eligible if:

- floral or faunal remains are found in clear association with cultural material
(Materials and Association) and
• the site exhibits stratigraphic separation of cultural components (Location).

Not Eligible

A multicomponent prehistoric site important for yielding data on changing subsistence patterns would not be eligible if:

• floral or faunal remains were so badly decomposed as to make identification impossible (Materials), or

• floral or faunal remains were disturbed in such a manner as to make their association with cultural remains ambiguous (Association), or

• the site has lost its stratigraphic context due to subsequent land alterations (Location).

Eligible

A lithic scatter site important for yielding data on lithic technology during the Late Archaic period can be eligible if:

• the site contains lithic debitage, finished stone tools, hammerstones, or antler flakers (Material and Design), and

• the site contains datable material (Association).

Not Eligible

A lithic scatter site important for yielding data on lithic technology during the Late Archaic period would not be eligible if:

• the site contains natural deposits of lithic materials that are impossible to distinguish from culturally modified lithic material (Design) or

• the site does not contain any temporal diagnostic evidence that could link the site to the Late Archaic period (Association).
IX. SUMMARY OF THE NATIONAL HISTORIC LANDMARKS CRITERIA FOR EVALUATION

A property being nominated to the National Register may also merit consideration for potential designation as a National Historic Landmark. Such consideration is dependent upon the stringent application of the following distinct set of criteria (found in the Code of Federal Regulations, Title 36, Part 65).

National Historic Landmarks Criteria

The quality of national significance is ascribed to districts, sites, buildings, structures, and objects that possess exceptional value or quality in illustrating or interpreting the heritage of the United States in history, architecture, archeology, engineering, and culture and that possess a high degree of integrity of location, design, setting, materials, workmanship, feeling, and association, and:

1. That are associated with events that have made a significant contribution to, and are identified with, or that outstandingly represent, the broad national patterns of United States history and from which an understanding and appreciation of those patterns may be gained; or

2. That are associated importantly with the lives of persons nationally significant in the history of the United States; or

3. That represent some great idea or ideal of the American people; or

4. That embody the distinguishing characteristics of an architectural type specimen exceptionally valuable for a study of a period, style or method of construction, or that represent a significant, distinctive and exceptional entity whose components may lack individual distinction; or

5. That are composed of integral parts of the environment not sufficiently significant by reason of historical association or artistic merit to warrant individual recognition but

collectively compose an entity of exceptional historical or artistic significance, or outstandingly commemorate or illustrate a way of life or culture; or

6. That have yielded or may be likely to yield information of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites are those which have yielded, or which may reasonably be expected to yield, data affecting theories, concepts and ideas to a major degree.

National Historic Landmark Exclusions

Ordinarily, cemeteries, birthplaces, graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings and properties that have achieved significance within the past fifty years are not eligible for designation. If such properties fall within the following categories they may, nevertheless, be found to qualify:

1. A religious property deriving its primary national significance from architectural or artistic distinction or historical importance; or

2. A building or structure removed from its original location but which is nationally significant primarily for its architectural merit, or for association with persons or events of transcendent importance in the nation's history and the association consequential; or

3. A site of a building or structure no longer standing but the person or event associated with it is of transcendent importance in the nation's history and the association consequential; or

4. A birthplace, grave or burial if it is of a historical figure of transcendent national significance and no other appropriate site, building, or structure directly associated with the productive life of that person exists; or

5. A cemetery that derives its primary national significance from graves of persons of transcendent importance, or from an exceptionally distinctive design or an exceptionally significant event; or

6. A reconstructed building or ensemble of buildings of extraordinary national significance when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other buildings or structures with the same association have survived; or

7. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own national historical significance; or

8. A property achieving national significance within the past 50 years if it is of extraordinary national importance.

Comparing the National Historic Landmarks Criteria and the National Register Criteria

In general, the instructions for preparing a National Register nomination and the guidelines stated in this bulletin for applying the National Register Criteria also apply to Landmark nominations and the use of the Landmark criteria. While there are specific distinctions discussed below, Parts IV and V of this bulletin apply equally to National Register listings and Landmark nominations. That is, the categories of historic properties are defined the same way; historic contexts are identified similarly; and comparative evaluation is carried out on the same principles enumerated in Part V.

There are some differences between National Register and National Historic Landmarks Criteria. The following is an explanation of how each Landmark Criterion compares with its National Register Criteria counterpart:

**Criterion 1**

This Criterion relates to National Register Criterion A. Both cover properties associated with events. The Landmark Criterion, however, requires that the events associated with the property be *outstandingly* represented by that property and that the property be related to the broad national patterns of U.S. history. Thus, the quality of the property to convey and interpret its meaning must be of a higher order and must relate to national themes rather than the narrower context of State or local themes.

**Criterion 2**

This Criterion relates to National Register Criterion B. Both cover properties associated with significant people. The Landmark Criterion differs in that it specifies that the association of a person to the property in question be an *important* one and that the person associated with the property be of *national* significance.

**Criterion 3**

This Criterion has no counterpart among the National Register Criteria. It is rarely, if ever, used alone. While not a landmark at present, the Liberty Bell is an object that might be considered under this Criterion. The application of this Criterion obviously requires the most careful scrutiny and would apply only in rare instances involving ideas and ideals of the highest order.

**Criterion 4**

This Criterion relates to National Register Criterion C. Its intent is to qualify exceptionally important works of architecture or collective elements of architecture extraordinarily significant as an ensemble, such as a historic district. Note that the language is more restrictive than that of the National Register Criterion in requiring that a candidate in architecture be "a specimen exceptionally valuable for the study of a period, style, or method of construction" rather than simply embodying distinctive characteristics of a type, period, or method of construction. With regard to historic districts, the Landmarks Criterion requires an entity that is distinctive and exceptional. Unlike National Register Criterion C, this Criterion will not qualify the works of a master, per se, but only such works which are exceptional or extraordinary. Artistic value is considered only in the context of history's judgement in order to avoid current conflicts of taste.
**Criterion 5**

This Criterion does not have a strict counterpart among the National Register Criteria. It may seem redundant of the latter part of Landmark Criterion 4. It is meant to cover collective entities such as Greenfield Village and historic districts like New Bedford, Massachusetts, which qualify for their collective association with a nationally significant event, movement, or broad pattern of national development.

**Criterion 6**

The National Register counterpart of this is Criterion D. Criterion 6 was developed specifically to recognize archeological sites. All such sites must address this Criterion. The following are the qualifications that distinguish this Criterion from its National Register counterpart: the information yielded or likely to be yielded must be of major scientific importance by revealing new cultures, or by shedding light upon periods of occupation over large areas of the United States. Such sites should be expected to yield data affecting theories, concepts, and ideas to a major degree.

The data recovered or expected to be recovered must make a major contribution to the existing corpus of information. Potentially recoverable data must be likely to revolutionize or substantially modify a major theme in history or prehistory, resolve a substantial historical or anthropological debate, or close a serious gap in a major theme of U. S. history or prehistory.

**Exclusions and Exceptions to the Exclusions**

This section of the National Historic Landmarks Criteria has its counterpart in the National Register's "Criteria Considerations." The most abundant difference between them is the addition of the qualifiers "national," "exceptional," or "extraordinary" before the word significance. Other than this, the following are the most notable distinctions:

**Exclusion 2**

Buildings moved from their original location, qualify only if one of two conditions are met: 1) the building is nationally significant for architecture, or 2) the persons or events with which they are associated are of transcendent national significance and the association is consequential.

Transcendent significance means an order of importance higher than that which would ordinarily qualify a person or event to be nationally significant. A consequential association is a relationship to a building that had an evident impact on events, rather than a connection that was incidental and passing.

**Exclusion 3**

This pertains to the site of a structure no longer standing. There is no counterpart to this exclusion in the National Register Criteria. In order for such a property to qualify for Landmark designation it must meet the second condition cited for Exclusion 2.

**Exclusion 4**

This exclusion relates to Criteria Consideration C of the National Register Criteria. The only difference is that a burial place qualifies for Landmark designation only if, in addition to other factors, the person buried is of transcendent national importance.

When evaluating properties at the national level for designation as a National Historic Landmark, please refer to the National Historic Landmarks outline, *History and Prehistory in the National Park System and the National Historic Landmarks Program*, 1987. For more information about the National Historic Landmarks program, please write to Department of the Interior, National Park Service, History Division, 1849 C St. NW, #2280, Washington, DC 20240.
X. GLOSSARY

**Associative Qualities** - An aspect of a property's history that links it with historic events, activities, or persons.

**Code of Federal Regulations** - Commonly referred to as "CFR." The part containing the National Register Criteria is usually referred to as 36 CFR 60, and is available from the National Park Service.

**CLG** - Certified Local Government.

**Culture** - A group of people linked together by shared values, beliefs, and historical associations, together with the group's social institutions and physical objects necessary to the operation of the institution.

**Cultural Resource** - See Historic Resource.

**Evaluation** - Process by which the significance and integrity of a historic property are judged and eligibility for National Register listing is determined.

**Historic Context** - An organizing structure for interpreting history that groups information about historic properties that share a common theme, common geographical area, and a common time period. The development of historic contexts is a foundation for decisions about the planning, identification, evaluation, registration, and treatment of historic properties, based upon comparative historic significance.

**Historic Integrity** - The unimpaired ability of a property to convey its historical significance.

**Historic Property** - See Historic Resource.

**Historic Resource** - Building, site, district, object, or structure evaluated as historically
significant.

**Identification** - Process through which information is gathered about historic properties.

**Listing** - The formal entry of a property in the National Register of Historic Places. See also, Registration.

**Nomination** - Official recommendation for listing a property in the National Register of Historic Places.

**Property Type** - A grouping of properties defined by common physical and associative attributes.

**Registration** - Process by which a historic property is documented and nominated or determined eligible for listing in the National Register.

**Research Design** - A statement of proposed identification, documentation, investigation, or other treatment of a historic property that identifies the project's goals, methods and techniques, expected results, and the relationship of the expected results to other proposed activities or treatments.
XI. List of National Register Bulletins

Link to list of all National Register Bulletins
Bulletins and Brochures

Our Bulletin Series provides you with guidance to document, evaluate and nominate historically significant sites to the National Register. The series is divided into four sections: the Basics, Property Types, Technical Assistance, and General Guidance. We also have several brochures that provide information on the programs of the National Register.

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8/30/2005
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- Guidelines for Evaluating and Documenting Historic Aviation Properties
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- Guidelines for Identifying, Evaluating, and Registering America's Historic Battlefields (#40)
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- How to Evaluate and Nominate Designed Historic Landscapes (#18)
- Guidelines for Identifying, Evaluating and Registering Historic Mining Properties (#42)
- Guidelines for Evaluating and Nominating Properties That Have Achieved Significance Within the Past Fifty Years (#22)
- How to Apply National Register Criteria to Post Offices (#13)
- Guidelines for Evaluating and Documenting Rural Historic Landscapes (#30)
- Guidelines for Evaluating and Documenting Properties Associated with Significant Persons (#32)
- Guidelines for Evaluating and Documenting Traditional Cultural Properties (#38) (A video on evaluating traditional cultural properties is also available)
- Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places (#20)

Technical Assistance for Preparing Nominations

- Defining Boundaries for National Register Properties (with Appendix, Definition of National Register Boundaries for Archeological Properties) (#12 and #21)
- How to Improve the Quality of Photographs for National Register Nominations (#23)
- Telling the Stories: Planning Effective Interpretive Programs for Places Listed in the National Register of Historic Places
- Using the UTM Grid System to Record Historic Sites (#28)*
- Reviewing National Register Nominations (#19)*

General Guidance

- Guidelines for Local Surveys: A Basis for Preservation Planning (#24)

* Examples of Documentation: National Register Casebook (#35)*
Out of Print

The following National Register Bulletins are no longer available:

- Contribution of Moved Buildings to Historic Districts
- Tax Treatments for Moved Buildings
- Use of Nomination Documentation in the Part I Certification Process
- Certification of State and Local Statutes and Historic Districts
- Guidelines for Counting Contributing and Noncontributing Resources for National Register Documentation (#14). The information contained in this former bulletin has been incorporated into How to Complete the National Register Registration Form (see The Basics above).

Please see 36 CFR 60, 36 CFR 67, and more recent National Register Bulletins for information formerly contained within these past bulletins.

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8/30/2005
U.S. Department of the Interior, National Park Service
National Register, History and Education

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1990; Revised 1992; 1998

Photo Captions: Left: Many traditional cultural properties are used for practical purposes by those who value them. This sedge preserve in northern California, for example, is tended and harvested by Pomi Indian basketmakers as a vital source of material for making their world famous baskets. The preserve was established at lake sonoma by the U.S. Army Corps of Engineers. Photo by Richard Lerner. Right: This bedrock mortar in central California plays an essential role in processing Black Oak acorns. (Photo courtesy Theodoratus Cultural Resource)

Table of Contents

Introduction

What are traditional cultural properties?
Purpose of this bulletin
Traditional Cultural Values in Preservation Planning

Identifying Traditional Cultural Properties

- Establishing the level of effort
- Contacting traditional communities and groups
- Fieldwork
- Reconciling sources

Determining Eligibility Step-by-Step

Step One: Ensure that the entity under consideration is a property
Step Two: Consider the property's integrity
Step Three: Evaluate the property with reference to the National Register Criteria
Step Four: Determine whether any of the National Register criteria considerations (36 CFR 60.4) make the property ineligible

Documenting Traditional Cultural Properties: General Considerations

- The problem of confidentiality
- Documenting visible and non-visible characteristics
- Period of significance
- Boundaries
- Describing the setting

Documenting Traditional Cultural Properties: Completing Registration Forms

Conclusion

Recommended Bibliography and Sources

Appendix I: A Definition of "Culture"

Appendix II: Professional Qualifications: Ethnography
Introduction

What are traditional cultural properties?

The National Register of Historic Places contains a wide range of historic property types, reflecting the diversity of the nation's history and culture. Buildings, structures, and sites; groups of buildings, structures or sites forming historic districts; landscapes; and individual objects are all included in the Register if they meet the criteria specified in the National Register's Criteria for Evaluation (36 CFR 60.4). Such properties reflect many kinds of significance in architecture, history, archeology, engineering, and culture.

There are many definitions of the word "culture," but in the National Register programs the word is understood to mean the traditions, beliefs, practices, lifeways, arts, crafts, and social institutions of any community, be it an Indian tribe, a local ethnic group, or the people of the nation as a whole (see Appendix 1).

One kind of cultural significance a property may possess, and that may make it eligible for inclusion in the Register, is traditional cultural significance. "Traditional" in this context refers to those beliefs, customs, and practices of a living community of people that have been passed down through the generations, usually orally or through practice. The traditional cultural significance of a historic property, then, is significance derived from the role the property plays in a community's historically rooted beliefs, customs, and practices.

Examples of properties possessing such significance include:

- a location associated with the traditional beliefs of a Native American group about its origins, its cultural history, or the nature of the world;

- a rural community whose organization, buildings and structures, or patterns of land use reflect the cultural traditions valued by its long-term residents;

- an urban neighborhood that is the traditional home of a particular cultural group, and

that reflects its beliefs and practices;

- a location where Native American religious practitioners have historically gone, and are known or thought to go today, to perform ceremonial activities in accordance with traditional cultural rules of practice; and

- a location where a community has traditionally carried out economic, artistic, or other cultural practices important in maintaining its historic identity.

A traditional cultural property, then, can be defined generally as one that is eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community’s history, and (b) are important in maintaining the continuing cultural identity of the community. Various kinds of traditional cultural properties will be discussed, illustrated, and related specifically to the National Register Criteria.

**Purpose of this Bulletin**

Traditional cultural values are often central to the way a community or group defines itself, and maintaining such values is often vital to maintaining the group’s sense of identity and self respect. Properties to which traditional cultural value is ascribed often take on this kind of vital significance, so that any damage to or infringement upon them is perceived to be deeply offensive to, and even destructive of, the group that values them. As a result, it is extremely important that traditional cultural properties be considered carefully in planning; hence it is important that such properties, when they are eligible for inclusion in the National Register, be nominated to the Register or otherwise identified in inventories for planning purposes.

Traditional cultural properties are often hard to recognize. A traditional ceremonial location may look like merely a mountaintop, a lake, or a stretch of river; a culturally important neighborhood may look like any other aggregation of houses, and an area where culturally important economic or artistic activities have been carried out may look like any other building, field of grass, or piece of forest in the area. As a result, such places may not necessarily come to light through the conduct of archeological, historical, or architectural surveys. The existence and significance of such locations often can be ascertained only through interviews with knowledgeable users of the area, or through other forms of ethnographic research. The subtlety with which the significance of such locations may be expressed makes it easy to ignore them; on the other hand it makes it difficult to distinguish between properties having real significance and those whose putative significance is spurious. As a result, clear guidelines for evaluation of such properties are needed.

In the 1980 amendments to the National Historic Preservation Act, the Secretary of the Interior, with the American Folklife Center, was directed to study means of:

preserving and conserving the intangible elements of our cultural heritage such as arts, skills, folklife, and folkways... 

and to recommend ways to:

preserve, conserve, and encourage the continuation of the diverse traditional prehistoric, historic, ethnic, and folk cultural traditions that underlie and are a living expression of our American heritage. (NHPA 502; 16 U.S.C. 470a note)

The report that was prepared in response to Section 502, entitled Cultural Conservation, was submitted to the President and Congress on June 1, 1983, by the Secretary of the Interior. The report recommended in general that traditional cultural resources, both those that are associated with historic properties and those without specific property referents, be more systematically addressed in implementation of the National Historic Preservation Act and other historic preservation authorities. In transmitting the report, the Secretary directed the National Park Service to take several actions to implement its recommendations. Among other actions, the Service was directed to prepare guidelines to assist in the documentation of intangible cultural resources, to coordinate the incorporation of provisions for the consideration of such resources into Departmental planning documents and administrative manuals, and to encourage the identification and documentation of such resources by States and Federal agencies.

This bulletin has been developed as one aspect of the Service's response to the Cultural Conservation report and the Secretary's direction. It is intended to be an aid in determining whether properties thought or alleged to have traditional cultural significance are eligible for inclusion in the National Register. It is meant to assist Federal agencies, State Historic Preservation Officers (SHPOs), Certified Local Governments, Indian Tribes, and other historic preservation practitioners who need to evaluate such properties when nominating them for inclusion in the National Register or when considering their eligibility for the Register as part of the review process prescribed by the Advisory Council on Historic Preservation under Section 106 of the National Historic Preservation Act. It is designed to supplement other National Register guidance, particularly National Register bulletins How to Apply the National Register Criteria for Evaluation and How to Complete the National Register of Historic Places Registration Form. It should be used in conjunction with these two Bulletins and other applicable guidance available from the National Register, when applying the National Register Criteria and preparing documentation to support nominations or determinations that a given property is or is not eligible for inclusion in the Register.

This Bulletin is also responsive to the American Indian Religious Freedom Act (AIRFA) of 1978, which requires the National Park Service, like other Federal agencies, to evaluate its policies and procedures with the aim of protecting the religious freedoms of Native Americans (Pub. L. 95-341 2). Examination of the policies and procedures of the National Register suggests that while they are in no way intended to be so interpreted, they can be interpreted by Federal agencies and others in a manner that excludes historic properties of religious significance to Native Americans from eligibility for inclusion in the National Register. This in turn may exclude such properties from the protections afforded by Section 106, which may result in their destruction, infringing upon the rights of Native Americans to use them in the free exercise of their religions. To minimize the likelihood of such misinterpretation, this Bulletin gives special attention to properties of traditional cultural significance to Native American groups, and to discussing the place of religion in the attribution of such significance.

The fact that this Bulletin gives special emphasis to Native American properties should not be taken to imply that only Native Americans ascribe traditional cultural value to historic properties, or that such ascription is common only to ethnic minority groups in general.

Americans of every ethnic origin have properties to which they ascribe traditional cultural value, and if such properties meet the National Register criteria, they can and should be nominated for inclusion in the Register.

This Bulletin does not address cultural resources that are purely "intangible"--i.e. those that have no property referents--except by exclusion. The Service is committed to ensuring that such resources are fully considered in planning and decision making by Federal agencies and others. Historic properties represent only some aspects of culture, and many other aspects, not necessarily reflected in properties as such, may be of vital importance in maintaining the integrity of a social group. However, the National Register is not the appropriate vehicle for recognizing cultural values that are purely intangible, nor is there legal authority to address them under \( \text{106} \) unless they are somehow related to a historic property.

The National Register lists, and Section106 requires review of effects on, tangible cultural resources—that is, historic properties. However, the attributes that give such properties significance, such as their association with historical events, often are intangible in nature. Such attributes cannot be ignored in evaluating and managing historic properties; properties and their intangible attributes of significance must be considered together. This Bulletin is meant to encourage its users to address the intangible cultural values that may make a property historic, and to do so in an evenhanded way that reflects solid research and not ethnocentric bias.

Finally, no one should regard this Bulletin as the only appropriate source of guidance on its subject, or interpret it rigidly. Although traditional cultural properties have been listed and recognized as eligible for inclusion in the National Register since the Register's inception, it is only in recent years that organized attention has been given to them. This Bulletin represents the best guidance the Register can provide as of the late 1980s, and the examples listed in the bibliography include the best known at this time (most examples are unpublished manuscripts). It is to be expected that approaches to such properties will continue to evolve. This Bulletin also is meant to supplement, not substitute for, more specific guidelines, such as those used by the National Park Service with respect to units of the National Park System and those used by some other agencies, States, local governments, or Indian tribes with respect to their own lands and programs.(i)

**Ethnography, ethnohistory, ethnocentrism**

Three words beginning with "ethno" will be used repeatedly in this Bulletin, and may not be familiar to all readers. All three are derived from the Greek ethnos, meaning "nation;" and are widely used in the study of anthropology and related disciplines.

Ethnography is the descriptive and analytic study of the culture of particular groups or communities. An ethnographer seeks to understand a community through interviews with its members and often through living in and observing it (a practice referred to as "participant observation").

Ethnohistory is the study of historical data, including but not necessarily limited to, documentary data pertaining to a group or community, using an ethnographic perspective.

Ethnographic and ethnohistorical research are usually carried out by specialists in cultural
anthropology, and by specialists in folklore and folklife, sociology, history, archeology and related disciplines with appropriate technical training (for a detailed discussion of the qualifications that a practitioner of ethnography or ethnohistory should possess, see Appendix II).

Ethnocentrism means viewing the world and the people in it only from the point of view of one's own culture and being unable to sympathize with the feelings, attitudes, and beliefs of someone who is a member of a different culture. It is particularly important to understand, and seek to avoid, ethnocentrism in the evaluation of traditional cultural properties. For example, Euroamerican society tends to emphasize "objective" observation of the physical world as the basis for making statements about that world. However, it may not be possible to use such observations as the major basis for evaluating a traditional cultural property. For example, there may be nothing observable to the outsider about a place regarded as sacred by a Native American group. Similarly, such a group's belief that its ancestors emerged from the earth at a specific location at the beginning of time may contradict Euroamerican science's belief that the group's ancestors migrated to North America from Siberia. These facts in no way diminish the significance of the locations in question in the eyes of those who value them; indeed they are irrelevant to their significance. It would be ethnocentric in the extreme to say that "whatever the Native American group says about this place, I can't see anything here so it is not significant" or "since I know these people's ancestors came from Siberia, the place where they think they emerged from the earth is of no significance."

It is vital to evaluate properties thought to have traditional cultural significance from the standpoint of those who may ascribe such significance to them, whatever one's own perception of them, based on one's own cultural values, may be. This is not to say that a group's assertions about the significance of a place should not be questioned or subjected to critical analysis, but they should not be rejected based on the premise that the beliefs they reflect are inferior to one's own.

Evaluation, consideration, and protection

One more point that should be remembered in evaluating traditional cultural properties—as in evaluating any other kind of properties—is that establishing that a property is eligible for inclusion in the National Register does not necessarily mean that the property must be protected from disturbance or damage. Establishing that a property is eligible means that it must be considered in planning Federal, federally assisted, and federally licensed undertakings, but it does not mean that such an undertaking cannot be allowed to damage or destroy it. Consultation must occur in accordance with the regulations of the Advisory Council (36 CFR Part 800) to identify, and if feasible adopt, measures to protect it, but if in the final analysis the public interest demands that the property be sacrificed to the needs of the project, there is nothing in the National Historic Preservation Act that prohibits this.

This principle is especially important to recognize with respect to traditional cultural properties, because such properties may be valued by a relatively small segment of a community that, on the whole, favors a project that will damage or destroy it. The fact that the community as a whole may be willing to dispense with the property in order to achieve the goals of the project does not mean that the property is not significant, but the fact that it is significant does not mean that it cannot be disturbed, or that the project must be foregone.

(1) It is notable that most of these examples are unpublished manuscripts. The literature pertaining to the identification and evaluation of traditional cultural properties, to say nothing of their treatment, remains a thin one.
Traditional Cultural Values in Preservation Planning

Traditional cultural properties, and the beliefs and institutions that give them significance, should be systematically addressed in programs of preservation planning and in the historic preservation components of land use plans. One very practical reason for this is to simplify the identification and evaluation of traditional cultural properties that may be threatened by construction and land use projects. Identifying and evaluating such properties can require detailed and extensive consultation, interview programs, and ethnographic fieldwork as discussed below. Having to conduct such activities may add considerably to the time and expense of compliance with Section 106, the National Environment Policy Act, and other authorities. Such costs can be reduced significantly, however, by early, proactive planning that identifies significant properties or areas likely to contain significant properties before specific projects are planned that may affect them, identifies parties likely to ascribe cultural value to such properties, and establishes routine systems for consultation with such parties.

The Secretary of the Interior's Standards for Preservation Planning provide for the establishment of "historic contexts" as a basic step in any preservation planning process be it planning for the comprehensive survey of a community or planning a construction project. A historic context is an organization of available information about, among other things, the cultural history of the area to be investigated, that identifies "the broad patterns of development in an area that may be represented by historic properties" (48 FR 44717). The traditions and traditional lifeways of a planning area may represent such "broad patterns," so information about them should be used as a basis for historic context development.

The Secretary of the Interior's Guidelines for Preservation Planning emphasize the need for organized public participation in context development (48 FR 44717). The Advisory Council on Historic Preservation Guidelines for Public Participation in Historic Preservation Review (ACHP 1988) provide detailed recommendations regarding such participation. Based on these standards and guidelines, groups that may ascribe traditional cultural values to an area's historic properties should be contacted and asked to assist in organizing information on the area. Historic contexts should be considered that reflect the history and culture of
such groups as the groups themselves understand them, as well as their history and culture as
defined by Euroamerican scholarship, and processes for consultation with such groups
should be integrated into routine planning and project review procedures.
Identifying Traditional Cultural Properties

Some traditional cultural properties are well known to the residents of an area. The San Francisco Peaks in Arizona, for example, are extensively documented and widely recognized as places of extreme cultural importance to the Hopi, Navajo, and other American Indian people of the Southwest, and it requires little study to recognize that Honolulu's Chinatown is a place of cultural importance to the city's Asian community. Most traditional cultural properties, however, must be identified through systematic study, just as most other kinds of historic properties must be identified. This section of this Bulletin will discuss some factors to consider in identifying traditional cultural properties. (For general guidelines for identification see the Secretary of the Interior's Standards and Guidelines for Identification [48 FR 44720-23]; National Register Bulletin: Guidelines for Local Surveys: A Basis for Preservation Planning; and Identification in Historic Preservation Review: a Decisionmaking Guide [ACHP/DOI 1988]).

Establishing the level of effort

Any comprehensive effort to identify historic properties in an area, be the area a community, a rural area, or the area that may be affected by a construction or land-use project, should include a reasonable effort to identify traditional cultural properties. What constitutes a "reasonable" effort depends in part on the likelihood that such properties may be present. The likelihood that such properties may be present can be reliably assessed only on the basis of background knowledge of the area's history, ethnography, and contemporary society developed through preservation planning. As a general although not invariable rule, however, rural areas are more likely than urban areas to contain properties of traditional cultural importance to American Indian or other native American communities, while urban areas are more likely to contain properties of significance to ethnic and other traditional neighborhoods.

Where identification is conducted as part of planning for a construction or land-use project,
the appropriate level of effort depends in part on whether the project under consideration is
the type of project that could affect traditional cultural properties. For example, as a rule the
rehabilitation of historic buildings may have relatively little potential for effect on such
properties. However, if a rehabilitation project may result in displacement of residents,
"gentrification" of a neighborhood, or other sociocultural impacts, the possibility that the
buildings to be rehabilitated, or the neighborhood in which they exist, may be ascribed
traditional cultural value by their residents or others should be considered. Similarly, most
day-to-day management activities of a land managing agency may have little potential for
effect on traditional cultural properties, but if the management activity involves an area or a
kind of resource that has high significance to a traditional group—for example, timber
harvesting in an area where an Indian tribe's religious practitioners may continue to carry out
traditional ceremonies—the potential for effect will be high.

These general rules of thumb aside, the way to determine what constitutes a reasonable effort
to identify traditional cultural properties is to consult those who may ascribe cultural
significance to locations within the study area. The need for community participation in
planning identification, as in other forms of preservation planning, cannot be over-
emphasized.

Contacting traditional communities and groups

An early step in any effort to identify historic properties is to consult with groups and
individuals who have special knowledge about and interests in the history and culture of the
area to be studied. In the case of traditional cultural properties, this means those individuals
and groups who may ascribe traditional cultural significance to locations within the study
area, and those who may have knowledge of such individuals and groups. Ideally, early
planning will have identified these individuals and groups, and established how to consult
with them. As a rule, however, the following steps are recommended.

Background research

An important first step in identifying such individuals and groups is to conduct background
research into what is already recorded about the area's history, ethnography, sociology, and
folklife. Published and unpublished source material on the historic and contemporary
composition of the area's social and cultural groups should be consulted; such source material
can often be found in the anthropology, sociology, or folklife libraries of local universities or
other academic institutions. Professional and nonprofessional students of the area's social and
cultural groups should also be consulted—for example, professional and avocational
anthropologists and folklorists who have studied the area. The State Historic Preservation
Office and any other official agency or organization that concerns itself with matters of
traditional culture—for example, a State Folklorist or a State Native American Commission—
should be contacted for recommendations about sources of information and about groups and
individuals to consult.

Making contact

Having reviewed available background data, the next step is to contact knowledgeable
groups and individuals directly, particularly those groups that are native to the area or have
resided there for a long time. Some such groups have official representatives—the tribal
council of an Indian tribe, for example, or an urban neighborhood council. In other cases, leadership may be less officially defined, and establishing contact may be more complicated. The assistance of ethnographers, sociologists, folklorists, and others who may have conducted research in the area or otherwise worked with its social groups may be necessary in such cases, in order to design ways of contacting and consulting such groups in ways that are both effective and consistent with their systems of leadership and communication.

It should be clearly recognized that expertise in traditional cultural values may not be found, or not found solely, among contemporary community leaders. In some cases, in fact, the current political leadership of a community or neighborhood may be hostile to or embarrassed about traditional matters. As a result, it may be necessary to seek out knowledgeable parties outside the community's official political structure. It is of course best to do this with the full knowledge and cooperation of the community's contemporary leaders; in most cases it is appropriate to ask such leaders to identify members of the community who are knowledgeable about traditional cultural matters, and use these parties as an initial network of consultants on the group's traditional values. If there is serious hostility between the group's contemporary leadership and its traditional experts, however, such cooperation may not be extended, and efforts to consult with traditional authorities may be actively opposed. Where this occurs, and it is necessary to proceed with the identification and evaluation of properties—for example, where such identification and evaluation are undertaken in connection with review of an undertaking under Section 106—careful negotiation and mediation may be necessary to overcome opposition and establish mutually acceptable ground rules for consultation. Again, the assistance of anthropologists or others with training and experience in work with the community, or with similar communities, may be necessary.

Federal agencies and others have found a variety of ways to contact knowledgeable parties in order to identify and evaluate traditional cultural properties. Generally speaking, the detail and complexity of the methods employed depend on the nature and complexity of the properties under consideration and the effects the agency's management or other activities may have on them. For example:

- The Black Hills National Forest designated a culturally sensitive engineer to work with local Indian tribes in establishing procedures by which the tribes could review Forest Service projects that might affect traditional cultural properties;

- The Air Force sponsored a conference of local traditional cultural authorities to review plans for deployment of an intercontinental missile system in Wyoming, resulting in guidelines to ensure that effects on traditional cultural properties would be minimized.

- The New Mexico Power Authority employed a professional cultural anthropologist to consult with Native American groups within the area to be affected by the Four Corners Power Project.

- The Ventura County (California) Flood Control Agency consulted with local Native American groups designated by the State Native American Heritage Commission to determine how to handle human remains to be exhumed from a cemetery that had to be relocated to make way for a flood control project.
• The Utah State Historic Preservation Officer entered into an agreement with the American Folklife Center to develop a comprehensive overview of the tangible and intangible historic resources of Grouse Creek, a traditional Mormon cowboy community.

• The Forest Service contracted for a full-scale ethnographic study to determine the significance of the Helkau Historic District on California's Six Rivers National Forest.

Fieldwork

Fieldwork to identify properties of traditional cultural significance involves consultation with knowledgeable parties, coupled with field inspection and recordation of locations identified as significant by such parties. It is often appropriate and efficient to combine such fieldwork with surveys to identify other kinds of historic properties, for example archeological sites and properties of architectural significance. If combined fieldwork is conducted, however, the professional standards appropriate to each kind of fieldwork should be adhered to, and appropriate expertise in each relevant discipline should be represented on the study team. The kinds of expertise typically needed for a detailed ethnographic study of traditional cultural properties are outlined in Appendix II. Applicable research standards can be found in Systematic Fieldwork, Volume 2: Ethnographic Analysis and Data Management. (Werner and Schoepfle 1986)

Culturally sensitive consultation

Since knowledge of traditional cultural values may not be shared readily with outsiders, knowledgeable parties should be consulted in cultural contexts that are familiar and reasonable to them. It is important to understand the role that the information being solicited may play in the culture of those from whom it is being solicited, and the kinds of rules that may surround its transmittal. In some societies traditional information is regarded as powerful, even dangerous. It is often believed that such information should be transmitted only under particular circumstances or to particular kinds of people. In some cases information is regarded as a valued commodity for which payment is in order, in other cases offering payment may be offensive. Sometimes information may be regarded as a gift, whose acceptance obligates the receiver to reciprocate in some way, in some cases by carrying out the activity to which the information pertains.

It may not always, or even often, be possible to arrange for information to be sought in precisely the way those being consulted might prefer, but when it is not, the interviewer should clearly understand that to some extent he or she is asking those interviewed to violate their cultural norms. The interviewer should try to keep such violations to a minimum, and should be patient with the reluctance that those interviewed may feel toward sharing information under conditions that are not fully appropriate from their point of view.

Culturally sensitive consultation may require the use of languages other than English, the conduct of community meetings in ways consistent with local traditional practice, and the conduct of studies by trained ethnographers, ethnohistorians, sociologists, or folklorists with the kinds of expertise outlined in Appendix II. Particularly where large projects or large land areas are involved, or where it is likely that particularly sensitive resources may be at issue,
formal ethnographic studies should be carried out, by or under the supervision of a professionally qualified cultural anthropologist.

Field inspection and recordation

It is usually important to take knowledgeable consultants into the field to inspect properties that they identify as significant. In some cases such properties may not be discernible as such to anyone but a knowledgeable member of the group that ascribes significance to them; in such cases it may be impossible even to find the relevant properties, or locate them accurately, without the aid of such parties. Even where a property is readily discernible as such to the outside observer, visiting the property may help a consultant recall information about it that he or she is unlikely to recall during interviews at a remote location, thus making for a richer and more complete record.

Where the property in question has religious significance or supernatural connotations, it is particularly important to ensure that any visit is carried out in accordance with appropriate modes of behavior. In some cases, ritual purification is necessary before a property can be approached, or spirits must be propitiated along the way. Some groups forbid visits to such locations by menstruating women or by people of inappropriate ages. The taking of photographs or the use of electronic recording equipment may not be appropriate. Appropriate ways to approach the property should be discussed with knowledgeable consultants before undertaking a field visit.

To the extent compatible with the cultural norms of the group involved, traditional cultural properties should be recorded on National Register of Historic Places forms or their equivalent. (For general instructions on the completion of National Register documentation, see National Register Bulletin: How to Complete the National Register Registration Form.) Where items normally included in a National Register nomination or request for a determination of eligibility cannot be included (for example, if it is culturally inappropriate to photograph the property), the reasons for not including the item should be explained. To the extent possible in the property's cultural context, other aspects of the documentation (for example, verbal descriptions of the property) should be enhanced to make up for the items not included.

If making the location of a property known to the public would be culturally inappropriate, or compromise the integrity of the property or associated cultural values (for example, by encouraging tourists to intrude upon the conduct of traditional practices), the "Not for Publication" box on the National Register form should be checked; this indicates that the reproduction of locational information is prohibited, and that other information contained in the nomination will not be reproduced without the permission of the nominating authority. In the case of a request for a determination of eligibility in which a National Register form is not used, the fact that the information is not for publication should be clearly specified in the documentation, so that the National Register can apply the same controls to this information as it would to restricted information in a nomination. (Section 304 of the National Historic Preservation Act provides the legal authority to withhold National Register information from the public when release might "create a substantial risk of harm, theft, or destruction.")

Reconciling sources

http://www.cr.nps.gov/nr/publications/bulletins/nrb38/nrb%2038%20page%203.htm 8/30/2005
Sometimes an apparent conflict exists between documentary data on traditional cultural properties and the testimony of contemporary consultants. The most common kind of conflict occurs when ethnographic and ethnohistorical documents do not identify a given place as playing an important role in the tradition and culture of a group, while contemporary members of the group say the property does have such a role. More rarely, documentary sources may indicate that a property does have cultural significance while contemporary sources say it does not. In some cases, too, contemporary sources may disagree about the significance of a property.

Where available documents fail to identify a property as culturally significant, but contemporary sources identify it as such, several points should be considered.

a. Ethnographic and ethnohistorical research has not been conducted uniformly in all parts of the nation; some areas are better documented than others simply because they have been the focus of more research.

b. Ethnographic and ethnohistorical documents reflect the research interests of those who prepared them; the fact that one does not identify a property as culturally important may reflect only the fact that the individual who prepared the report had research interests that did not require the identification of such properties.

c. Some kinds of traditional cultural properties are regarded by those who value them as the loci of supernatural or other power, or as having other attributes that make people reluctant to talk about them. Such properties are not likely to be recorded unless someone makes a very deliberate effort to do so, or unless those who value them have a special reason for revealing the information—for example, a perception that the property is in some kind of danger.

Particularly because properties of traditional cultural significance are often kept secret, it is not uncommon for them to be "discovered" only when something threatens them—for example, when a change in land-use is proposed in their vicinity. The sudden revelation by representatives of a cultural group which may also have other economic or political interests in the proposed change can lead quickly to charges that the cultural significance of a property has been invented only to obstruct or otherwise influence those planning the change. This may be true, and the possibility that traditional cultural significance is attributed to a property only to advance other, unrelated interests should be carefully considered. However, it also may be that until the change was proposed, there simply was no reason for those who value the property to reveal its existence or the significance they ascribe to it.

Where ethnographic, ethnohistorical, historical, or other sources identify a property as having cultural significance, but contemporary sources say that it lacks such significance, the interests of the contemporary sources should be carefully considered. Individuals who have economic interests in the potential development of an area may be strongly motivated to deny its cultural significance. More subtly, individuals who regard traditional practices and beliefs as backward and contrary to the best contemporary interests of the group that once ascribed significance to a property may feel justified in saying that such significance has been lost, or was never ascribed to the property. On the other hand, of course, it may be that the documentary sources are wrong, or that the significance ascribed to the property when the documents were prepared has since been lost.
Similar consideration must be taken into account in attempting to reconcile conflicting contemporary sources. Where one individual or group asserts that a property has traditional cultural significance, and another asserts that it does not or where there is disagreement about the nature or extent of a property's significance, the motives and values of the parties, and the cultural constraints operating on each, must be carefully analyzed.

In general, the only reasonably reliable way to resolve conflict among sources is to review a wide enough range of documentary data, and to interview a wide enough range of authorities to minimize the likelihood either of inadvertent bias or of being deliberately misled. Authorities consulted in most cases should include both knowledgeable parties within the group that may attribute cultural value to a property and appropriate specialists in ethnography, sociology, history, and other relevant disciplines. (For excellent examples of studies designed in whole or in part to identify and evaluate traditional cultural properties based on both documentary sources and the testimony of contemporary consultants, see Bean and Vane 1978; Carroll 1983; Johnston and Budy 1983; Stoffle and Dobyns 1982, 1983; Theodoratus 1979.)
Determining Eligibility: Step by Step

Whether a property is known in advance or found during an identification effort, it must be evaluated with reference to the National Register Criteria for Evaluation (36 CFR Part 60) in order to determine whether it is eligible for inclusion in the Register. This section discusses the process of evaluation as a series of sequential steps. In real life of course, these steps are often collapsed into one another or taken together.

Step One: Ensure that the entity under consideration is a property

Because the cultural practices or beliefs that give a traditional cultural property its significance are typically still observed in some form at the time the property is evaluated, it is sometimes perceived that the intangible practices or beliefs themselves, not the property, constitute the subject of evaluation. There is naturally a dynamic relationship between tangible and intangible traditional cultural resources, and the beliefs or practices associated with a traditional cultural property are of central importance in defining its significance. However, it should be clearly recognized at the outset that the National Register does not include intangible resources themselves. The entity evaluated must be a tangible property--that is, a district, site, building, structure, or object (see National Register Bulletin: How to Apply the National Register Criteria for Evaluation, for discussion of property types). The relationship between the property and the beliefs or practices associated with it should be carefully considered, however, since it is the beliefs and practices that may give the property its significance and make it eligible for inclusion in the National Register.

Construction by human beings is a necessary attribute of buildings and structures, but districts, sites, and objects do not have to be the products of, or contain, the work of human beings in order to be classified as properties. For example, the National Register defines a "site" as "the location of a significant event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself..."
possesses historic, cultural, or archeological value regardless of the value of any existing structure" (see National Register Bulletin: How to Complete the National Register Registration Form). Thus a property may be defined as a "site" as long as it was the location of a significant event or activity, regardless of whether the event or activity left any evidence of its occurrence. A culturally significant natural landscape may be classified as a site, as may the specific location where significant traditional events, activities, or cultural observances have taken place. A natural object such as a tree or a rock outcrop may be an eligible object if it is associated with a significant tradition or use. A concentration, linkage, or continuity of such sites or objects, or of structures comprising a culturally significant entity, may be classified as a district.

In considering the eligibility of a property that contains no observable evidence of human activity, however, the documentary or oral evidence for the association of the property with traditional events, activities or observances should be carefully weighed and assessed. The National Register discourages the nomination of natural features without sound documentation of their historical or cultural significance.

Step Two: Consider the property's integrity

In order to be eligible for inclusion in the Register, a property must have "integrity of location, design, setting, materials, workmanship, feeling, and association" (36 CFR Part 60). In the case of a traditional cultural property, there are two fundamental questions to ask about integrity. First, does the property have an integral relationship to traditional cultural practices or beliefs; and second, is the condition of the property such that the relevant relationships survive?

Integrity of relationship

Assessing the integrity of the relationship between a property and the beliefs or practices that may give it significance involves developing some understanding about how the group that holds the beliefs or carries out the practices is likely to view the property. If the property is known or likely to be regarded by a traditional cultural group as important in the retention or transmittal of a belief, or to the performance of a practice, the property can be taken to have an integral relationship with the belief or practice, and vice-versa.

For example, imagine two groups living along the shores of a lake. Each group practices a form of baptism to mark an individual's acceptance into the group. Both carry out baptism in the lake. One group, however, holds that baptism is appropriate in any body of water that is available; the lake happens to be available, so it is used, but another lake, a river or creek, or a swimming pool would be just as acceptable. The second group regards baptism in this particular lake as essential to its acceptance of an individual as a member. Clearly the lake is integrally related to the second group's practice, but not to that of the first.

Integrity of condition

Like any other kind of historic property, a property that once had traditional cultural significance can lose such significance through physical alteration of its location, setting, design, or materials. For example, an urban neighborhood whose structures, objects, and spaces reflect the historically rooted values of a traditional social group may lose its
significance if these aspects of the neighborhood are substantially altered.

In some cases a traditional cultural property can also lose its significance through alteration of its setting or environment. For example, a location used by an American Indian group for traditional spirit questing is unlikely to retain its significance for this purpose if it has come to be surrounded by housing tracts or shopping malls.

A property may retain its traditional cultural significance even though it has been substantially modified, however. Cultural values are dynamic, and can sometimes accommodate a good deal of change. For example, the Karuk Indians of northwestern California continue to carry on world renewal rites, ancient ceremonies featuring elaborate dances, songs, and other ritual activities, along a stretch of the Klamath River that is now the site of a highway, a Forest Service Ranger Station, a number of residences, and a timber cutting operation. Specific locations important in aspects of the ceremony remain intact, and accommodation has been reached between the Karuk and other users of the land. The State Department of Transportation has even erected "Ritual Crossing" signs at locations where the Karuk religious practitioners cross the highway, and built shallow depressions into the roadway which are filled with sand in advance of the ceremony, so the feet of the practitioners need not be profaned by contact with man-made macadam. As this example shows, the integrity of a possible traditional cultural property must be considered with reference to the views of traditional practitioners; if its integrity has not been lost in their eyes, it probably has sufficient integrity to justify further evaluation.

Some kinds of traditional cultural significance also may be retained regardless of how the surroundings of a property may be changed. For example, the First African Baptist Church Cemetery in Philadelphia, rediscovered during archeological work in advance of highway construction in 1985, has considerable cultural significance for the congregation that traces descent from those interred in the Cemetery, and for Philadelphia's African American community in general, even though its graves had been buried under fill and modern construction for many decades.

It should also be recalled that even if a property has lost integrity as a possible traditional cultural property, it may retain integrity with reference to some other aspect of significance. For example, a property whose cultural significance has been lost through disturbance may still retain archeological deposits of significance for their information content, and a neighborhood whose traditional residents no longer ascribe significance to it may contain buildings of architectural importance.

Step Three: Evaluate the property with reference to the National Register Criteria

Assuming the entity to be evaluated is a property, and that it retains integrity, it is next necessary to evaluate it against the four basic National Register Criteria set forth in the National Register regulations (36 CFR Part 60). If the property meets one or more of the criteria, it may be eligible; if it does not, it is not eligible. (For general guidelines, see National Register Bulletin: How to Apply the National Register Criteria for Evaluation.)

Criterion A: Association with events that have made a significant contribution to the broad patterns of our history.
The word "our" in this criterion may be taken to refer to the group to which the property may have traditional cultural significance, and the word "history" may be taken to include traditional oral history as well as recorded history. For example, Mt. Tonaachaw on Moen Island in Truk, Federated States of Micronesia, is in the National Register in part because of association with oral traditions about the establishment of Trukese society.

"Events" can include specific moments in history of a series of events reflecting a broad pattern or theme. For example, the ongoing participation of an ethnic or social group in an area's history, reflected in a neighborhood's buildings, streetscapes, or patterns of social activity, constitutes such a series of events.

The association of a property with significant events, and its existence at the time the events took place, must be documented through accepted means of historical research. The means of research normally employed with respect to traditional cultural properties include ethnographic, ethnohistorical, and folklore studies, as well as historical and archeological research. Sometimes, however, the actual time a traditional event took place may be ambiguous; in such cases it may be impossible, and to some extent irrelevant, to demonstrate with certainty that the property in question existed at the time the traditional event occurred. For example, events recounted in the traditions of Native American groups may have occurred in a time before the creation of the world as we know it, or at least before the creation of people. It would be fruitless to try to demonstrate, using the techniques of history and science, that a given location did or did not objectively exist in a time whose own existence cannot be demonstrated scientifically. Such a demonstration is unnecessary for purposes of eligibility determination; as long as the tradition itself is rooted in the history of the group, and associates the property with traditional events, the association can be accepted.

Criterion B: Association with the lives of persons significant in our past.

Again, the word "our" can be interpreted with reference to the people who are thought to regard the property as traditionally important. The word "persons" can be taken to refer both to persons whose tangible, human existence in the past can be inferred on the basis of historical, ethnographic, or other research, and to "persons" such as gods and demigods who feature in the traditions of a group. For example, Tahquitz Canyon in southern California is included in the National Register in part because of its association with Tahquitz, a Cahuilla Indian demigod who figures importantly in the tribe's traditions and is said to occupy an obsidian cave high in the canyon.

Criterion C (1): Embodiment of the distinctive characteristics of a type, period, or method of construction. [Note: Criterion C is not subdivided into subcriteria (1), (2), etc. in 36 CFR 60.4. The subdivision given here is only for the convenience of the reader.]

This subcriterion applies to properties that have been constructed, or contain constructed entities—that is, buildings, structures, or built objects. For example, a neighborhood that has traditionally been occupied by a particular ethnic group may display particular housing styles, gardens, street furniture or ornamentation distinctive of the group. Honolulu's Chinatown, for example, embodies the distinctive cultural values of the City's Asian community in its architecture, landscaping, signage, and ornamentation.

Criterion C (2): Representative of the work of a master.
A property identified in tradition or suggested by scholarship to be the work of a traditional master builder or artisan may be regarded as the work of a master, even though the precise identity of the master may not be known.

**Criterion C (3): Possession of high artistic values.**

A property made up of or containing art work valued by a group for traditional cultural reasons, for example a petroglyph or pictograph site venerated by an Indian group, or a building whose decorative elements reflect a local ethnic groups distinctive modes of expression, may be viewed as having high artistic value from the standpoint of the group.

**Criterion C (4): Representative of a significant and distinguishable entity whose components may lack individual distinction.**

A property may be regarded as representative of a significant and distinguishable entity, even though it lacks individual distinction, if it represents or is an integral part of a larger entity of traditional cultural importance. The larger entity may, and usually does, possess both tangible and intangible components. For example, certain locations along the Russian River in California are highly valued by the Pomo Indians, and have been for centuries, as sources of high quality sedge roots needed in the construction of the Pomo's world famous basketry. Although the sedge fields themselves are virtually indistinguishable from the surrounding landscape, and certainly indistinguishable by the untrained observer from other sedge fields that produce lower quality roots, they are representative of, and vital to, the larger entity of Pomo basketmaking. Similarly, some deeply venerated landmarks in Micronesia are natural features, such as rock outcrops and groves of trees; these are indistinguishable visually (at least to the outside observer) from other rocks and trees, but they figure importantly in chants embodying traditional sailing directions and lessons about traditional history. As individual objects they lack distinction, but the larger entity of which they are a part--Micronesian navigational and historical tradition--is of prime importance in the area's history.

**Criterion D: History of yielding, or potential to yield, information important in prehistory or history.**

Properties that have traditional cultural significance often have already yielded, or have the potential to yield, important information through ethnographic, archeological, sociological, folkloric, or other studies. For example, ethnographic and ethnohistorical studies of Kaho'olawe Island in Hawai'i, conducted in order to clarify its eligibility for inclusion in the National Register, have provided important insights into Hawai'ian traditions and culture and into the history of twentieth century efforts to revitalize traditional Hawai'ian culture. Similarly, many traditional American Indian village sites are also archeological sites, whose study can provide important information about the history and prehistory of the group that lived there. Generally speaking, however, a traditional cultural property's history of yielding, or potential to yield, information, if relevant to its significance at all, is secondary to its association with the traditional history and culture of the group that ascribes significance to it.

**Step 4: Determine whether any of the National Register criteria considerations (36 CFR 60.4) make the property ineligible**
Generally speaking, a property is not eligible for inclusion in the Register if it represents a class of properties to which one or more of the six "criteria considerations" listed in 36 CFR 60.4 applies, and is not part of a district that is eligible.

In applying the criteria considerations, it is important to be sensitive to the cultural values involved, and to avoid ethnocentric bias, as discussed below. (For general guidelines, see National Register Bulletin: How to Apply the National Register Criteria for Evaluation.)

**Consideration A: Ownership by a religious institution or use for religious purposes.**

A "religious property," according to National Register guidelines, requires additional justification (for nomination) because of the necessity to avoid any appearance of judgement by government about the merit of any religion or belief"(see How to Complete the National Register Form for details). Conversely, it is necessary to be careful not to allow a similar judgment to serve as the basis for determining a property to be ineligible for inclusion in the Register. Application of this criteria consideration to traditional cultural properties is fraught with the potential for ethnocentrism and discrimination. In many traditional societies, including most American Indian societies, the clear distinction made by Euroamerican society between religion and the rest of culture does not exist. As a result, properties that have traditional cultural significance are regularly discussed by those who value them in terms that have religious connotations. Inyan Karan Mountain, for example, a National Register property in the Black Hills of South Dakota, is significant in part because it is the abode of spirits in the traditions of the Lakota and Cheyenne. Some traditional cultural properties are used for purposes that are defensible as religious in Euroamerican terms, and this use is intrinsic to their cultural significance.

Kootenai Falls on the Kootenai River in Idaho, part of the National Register-eligible Kootenai Falls Cultural Resource District, has been used for centuries as a vision questing site by the Kootenai tribe. The Helkau Historic District in northern California is a place where traditional religious practitioners go to make medicine and commune with spirits, and Mt. Tonaachaw in Truk is an object of spiritual veneration. The fact that such properties have religious connotations does not automatically make them ineligible for inclusion in the Register.

Applying the "religious exclusion" without careful and sympathetic consideration to properties of significance to a traditional cultural group can result in discriminating against the group by effectively denying the legitimacy of its history and culture. The history of a Native American group, as conceived by its indigenous cultural authorities, is likely to reflect a kind of belief in supernatural beings and events that Euroamerican culture categorizes as religious, although the group involved, as is often the case with Native American groups, may not even have a word in its language for "religion." To exclude from the National Register a property of cultural and historical importance to such a group, because its significance tends to be expressed in terms that to the Euroamerican observer appear to be "religious" is ethnocentric in the extreme.

In simplest terms, the fact that a property is used for religious purposes by a traditional group, such as seeking supernatural visions, collecting or preparing native medicines, or carrying out ceremonies, or is described by the group in terms that are classified by the outside observer as "religious" should not by itself be taken to make the property ineligible, since these activities may be expressions of traditional cultural beliefs and may be intrinsic
to the continuation of traditional cultural practices. Similarly, the fact that the group that owns a property—for example, an American Indian tribe—describes it in religious terms, or constitutes a group of traditional religious practitioners, should not automatically be taken to exclude the property from inclusion in the Register. Criteria Consideration A was included in the Criteria for Evaluation in order to avoid allowing historical significance to be determined on the basis of religious doctrine, not in order to exclude arbitrarily any property having religious associations. National Register guidelines stress the fact that properties can be listed in or determined eligible for the Register for their association with religious history, or with persons significant in religion, if such significance has "scholarly, secular recognition" (again, found in How to Complete the National Register Form). The integral relationship among traditional Native American culture, history, and religion is widely recognized in secular scholarship (for example see U.S. Commission on Civil Rights 1983; Michaelson 1986). Studies leading to the nomination of traditional cultural properties to the Register should have among their purposes the application of secular scholarship to the association of particular properties with broad patterns of traditional history and culture. The fact that traditional history and culture may be discussed in religious terms does not make it less historical or less significant to culture, nor does it make properties associated with traditional history and culture ineligible for inclusion in the National Register.

Consideration B: Relocated properties.

Properties that have been moved from their historically important locations are not usually eligible for inclusion in the Register, because "the significance of (historic properties) is embodied in their locations and settings as well as in the (properties) themselves" and because "one basic purpose of the National Register is to encourage the preservation of historic properties as living parts of their communities" (see How to Complete the National Register Form). This consideration is relevant but rarely applied formally to traditional cultural properties; in most cases the property in question is a site or district which cannot be relocated in any event. Even where the property can be relocated, maintaining it on its original site is often crucial to maintaining its importance in traditional culture, and if it has been moved, most traditional authorities would regard its significance as lost.

Where a property is intrinsically portable, however, moving it does not destroy its significance, provided it remains "located in a historically appropriate setting" (How to Complete the National Register Form). For example, a traditionally important canoe or other watercraft would continue to be eligible as long as it remained in the water or in an appropriate dry land context (e.g., a boathouse). A property may also retain its significance if it has been moved historically, which the National Register bulletin How to Complete the National Register Form addresses. For example, totem poles moved from one Northwest Coast village to another in early times by those who made or used them would not have lost their significance by virtue of the move. In some cases, actual or putative relocation even contributes to the significance of a property. The topmost peak of Mt. Tonaachaw in Truk, for example, is traditionally thought to have been brought from another island; the stories surrounding this magical relocation are parts of the mountains cultural significance.

In some cases it may be possible to relocate a traditionally significant property and still retain its significance, provided the property's "historic and present orientation, immediate setting, and general environment" are carefully considered in planning and executing the move. At Lake Sonoma in California, for example, the U.S. Army Corps of Engineers relocated a number of boulders containing petroglyphs having artistic, archeological, and
traditional cultural significance to protect them from inundation. The work was done in consultation with members of the local Pomo Indian tribe, and apparently did not destroy the significance of the boulders in the eyes of the tribe. The location to which a property is relocated, and the extent to which it retains its integrity after relocation, must be carefully considered in judging its continued eligibility for inclusion in the National Register (see How to Complete the National Register Form for general guidelines).

**Consideration C: Birthplaces and graves.**

Birthplaces and graves of famous persons are not usually eligible for inclusion in the Register as such. If the birthplace or gravesite of a historical person is significant for reasons other than its association with that person, however, the property can of course be eligible. Thus in the case of a traditional cultural property, if someone's birth or burial within the property's boundaries was incidental to the larger traditional significance of the property, the fact that it occurred does not make the property ineligible. For example, in South Texas, the burial site of Don Pedro Jaramillo, a well documented folk healer who practiced at the turn of the century, has for more than seventy years been a culturally significant site for the performance of traditional healing rituals by Mexican American folk healers. Here the cultural significance of the site as a center for healing is related to the intangible belief that Don Pedro's spirit is stronger there than in other places, rather than to the fact of his burial there.

On the other hand, it is possible for the birth or burial itself to have been ascribed such cultural importance that its association with the property contributes to its significance. Tahquitz Canyon in southern California, for example, is in a sense the traditional "birthplace" of the entire Cahuilla Indian people. Its status as such does not make it ineligible; on the contrary, it is intrinsic to its eligibility. Mt. Tonaachaw in Truk is according to some traditions the birthplace of the culture hero Souwoomiiras, whose efforts to organize society among the islands of Truk Lagoon are the stuff of Trukese legend. The association of his birth with the mountain does not make the mountain ineligible; rather, it contributes to its eligibility.

**Consideration D: Cemeteries.**

Cemeteries are not ordinarily eligible for inclusion in the Register unless they "derive (their) primary significance from graves of persons of transcendent importance, from age, from distinctive design values, or from association with historic events" (How to Complete the National Register Form). Many traditional cultural properties contain cemeteries, however, whose presence contributes to their significance. Tahquitz Canyon, for example, whose major significance lies in its association with Cahuilla traditional history, contains a number of cemeteries that are the subjects of great concern to the Cahuilla people. The fact that they are present does not render the Canyon ineligible; on the contrary, as reflections of the long historical association between the Cahuilla and the Canyon, the cemeteries reflect and contribute to the Canyon's significance. Thus the fact that a traditional cultural property is or contains a cemetery should not automatically be taken to render it ineligible.

**Consideration E: Reconstruction.**

A reconstructed property—that is, a new construction that ostensibly reproduces the exact form and detail of a property or portion of a property that has vanished, as it appeared at a
specific period in time—is not normally eligible for inclusion in the Register unless it meets strict criteria, as can be found in How to Complete the National Register Form. The fact that some reconstruction has occurred within the boundaries of a traditional cultural property, however, does not justify regarding the property as ineligible for inclusion in the Register. For example, individuals involved in the revitalization of traditional Hawai‘ian culture and religion have reconstructed certain religious structures on the island of Kaho‘olawe; while the structures themselves might not be eligible for inclusion in the Register, their construction in no way diminishes the island’s eligibility.

**Consideration F: Commemoration.**

Like other properties, those constructed to commemorate a traditional event or person cannot be found eligible for inclusion in the Register based on association with that event or person alone (see How to Complete the national Register Form for details). The mere fact that commemoration is involved in the use or design of a property should not be taken to make the property ineligible, however. For example, traditional meetinghouses in the Republic of Palau, included in the National Register, are typically ornamented with "storyboards" commemorating traditional events; these derive their design from traditional Palauan aesthetic values, and thus contribute to the cultural significance of the structures. They connect the structures with the traditional history of the islands, and in no way diminish their cultural, ethnographic, and architectural significance. Similarly, the murals painted in many local post offices across the United States by artists employed during the 1930s by the Works Progress Administration (WPA) often commemorate local historical events, but this does not make the murals, or the buildings in which they were painted, ineligible for the Register.

**Consideration G: Significance achieved within the past 50 years.**

Properties that have achieved significance only within the 50 years preceding their evaluation are not eligible for inclusion in the Register unless "sufficient historical perspective exists to determine that the property is exceptionally important and will continue to retain that distinction in the future" (How to Complete the National Register Form) This is an extremely important criteria consideration with respect to traditional cultural values. A significance ascribed to a property only in the past 50 years cannot be considered traditional.

As an example, consider a mountain peak used by an Indian tribe for communication with the supernatural. If the peak has been used by members of the tribe for many years, or if it was used by members of the tribe in prehistory or early history, it may be eligible, but if its use has begun only within the past 50 years, it is probably not eligible.

The fact that a property may have gone unused for a lengthy period of time, with use beginning again only recently, does not make the property ineligible for the Register. For example, assume that the Indian tribe referred to above used the mountain peak in prehistory for communication with the supernatural, but was forced to abandon such use when it was confined to a distant reservation, or when its members were converted to Christianity. Assume further that a revitalization of traditional religion has begun in the last decade, and as a result the peak is again being used for vision quests similar to those carried out there in prehistory. The fact that the contemporary use of the peak has little continuous time depth does not make the peak ineligible; the peak’s association with the traditional activity reflected in its contemporary use is what must be considered in determining eligibility.
The length of time a property has been used for some kinds of traditional purposes may be difficult to establish objectively. Many cultural uses may have left little or no physical evidence, and may not have been noted by ethnographers or early visitors to the area. Some such uses are explicitly kept from outsiders by members of the group ascribing significance to the property. Indirect evidence and inference must be weighed carefully, by or in consultation with trained ethnographers, ethnohistorians, and other specialists, and professional judgments made that represent one's best, good-faith interpretation of the available data.
Documenting Traditional Cultural Properties: General Considerations

Generally speaking, documentation of a traditional cultural property, on a National Register nomination form or in eligibility documentation, should include a presentation of the results of interviews and observations that systematically describe the behavior, beliefs, and knowledge that are germane to understanding the property's cultural significance, and an organized analysis of these results. The data base from which the formal nomination or eligibility determination documents are derived should normally include appropriate tape recordings, photographs, field notes, and primary written records.

Obtaining and presenting such documentation can present special challenges, however. First, those who ascribe significance to the property may be reluctant to allow its description to be committed to paper, or to be filed with a public agency that might release information about it to inappropriate people. Second, documentation necessarily involves addressing not only the physical characteristics of the property as perceived by an outside observer, but culturally significant aspects of the property that may be visible or knowable only to those in whose traditions it is significant. Third, boundaries are often difficult to define. Fourth, in part because of the difficulty involved in defining boundaries, it is important to address the setting of the property.

The problem of confidentiality

Particularly where a property has supernatural connotations in the minds of those who ascribe significance to it, or where it is used in ongoing cultural activities that are not readily shared with outsiders, it may be strongly desired that both the nature and the precise location of the property be kept secret. Such a desire on the part of those who value a property should of course be respected, but it presents considerable problems for the use of National Register data in planning. In simplest terms, one cannot protect a property if one does not know that it is there.
The need to reveal information about something that one's cultural system demands be kept secret can present agonizing problems for traditional groups and individuals. It is one reason that information on traditional cultural properties is not readily shared with Federal agencies and others during the planning and environmental review of construction and land use projects. However, concerned one may be about the impacts of such a project on a traditional cultural property, it may be extremely difficult to express these concerns to an outsider if one's cultural system provides no acceptable mechanism for doing so. These difficulties are sometimes hard for outsiders to understand, but they should not be underrated. In some cultures it is sincerely believed that sharing information inappropriately with outsiders will lead to death or severe injury to one's family or group.

As noted above, information on historic properties, including traditional cultural properties, may be kept confidential under the authority of Section 304 of the National Historic Preservation Act (2). This may not always be enough to satisfy the concerns of those who value, but fear the results of releasing information on, traditional cultural properties. In some cases these concerns may make it necessary not to nominate such properties formally at all, or not to seek formal determinations of eligibility, but simply to maintain some kind of minimal data in planning files. For example, in planning deployment of the MX missile system in Wyoming, the Air Force became aware that the Lakota Indian tribe in the area had concerns about the project's impacts on traditional cultural properties, but was unwilling to identify and document the precise locations and significance of such properties. To resolve this problem, Air Force representatives met with the tribe's traditional cultural authorities and indicated where they wanted to construct the various facilities required by the deployment; the tribe's authorities indicated which of these locations were likely to present problems, without saying what the nature of the problems might be. The Air Force then designed the project to minimize use of such areas. In a narrow sense, obviously, the Air Force did not go through the process of evaluation recommended by this Bulletin; no specific properties were identified or evaluated to determine their eligibility for inclusion in the National Register. In a broader sense, however, the Air Force's approach represents excellent practice in the identification and treatment of traditional cultural properties. The Air Force consulted carefully and respectfully with those who ascribed traditional cultural significance to properties in the area, and sought to accommodate their concerns. The tribe responded favorably to this approach, and did not take undue advantage of it. Presumably, had the tribe expressed concern about such expansive or strategically located areas as to suggest that it was more interested in impeding the deployment than in protecting its valued properties the Air Force would have had to use a different approach.

In summary: the need that often exists to keep the location and nature of a traditional cultural property secret can present intractable problems. These must be recognized and dealt with flexibly, with an understanding of the fact that the management problems they may present to Federal agencies or State Historic Preservation Officers may pale into insignificance when compared with the wrenching cultural conflicts they may present to those who value the properties.

**Documenting visible and non-visible characteristics**

Documentation of a traditional cultural property should present not only its contemporary physical appearance and, if known, its historical appearance, but also the way it is described in the relevant traditional belief or practice. For example, one of the important cultural
locations on Mt. Tonaachaw in Truk is an area called "Neepisaram," which physically looks like nothing but a grassy slope near the top of the mountain. In tradition, however, it is seen as the ear of "kuus," a metaphorical octopus identified with the mountain, and as the home of "Saraw," a warrior spirit/barracuda. Obviously a nomination of "Neepisaram" would be incomplete and largely irrelevant to its significance if it identified it only as a grassy slope near the top of the mountain.

**Period of significance**

Describing the period of significance for a traditional cultural property can be an intellectual challenge, particularly where the traditions of a Native American or Micronesian group are involved. In such cases there are often two different kinds of "periods." One of these is the period in which, in tradition, the property gained its significance—the period during which the Cahuilla people emerged from the lower world through Tahquitz Canyon, or the period when civilization came to Truk through the magical arrival of the culture-bearer Sowukachaw on Mt. Tonaachaw. Such periods often have no fixed referent in time as it is ordinarily construed by Euroamerican scholarship (except, perhaps, by some of the more esoteric subfields of cosmology and quantum mechanics). To the Cahuilla, their ancestors simply emerged from the lower world at the beginning of human life on earth, whenever that may have been. A Trukese traditional authority will typically say simply that Sowukachaw came to Truk "n¢¢mw n¢¢mw n¢¢mw" (long, long ago). It is usually fruitless, and of little or no relevance to the eligibility of the property involved for inclusion in the National Register, to try to relate this sort of traditional time to time as measured by Euroamerican history. Traditional "periods" should be defined in their own terms. If a traditional group says a property was created at the dawn of time, this should be reported in the nomination or eligibility documentation; for purposes of National Register eligibility there is no need to try to establish whether, according to Euroamerican scholarship or radiocarbon age determination, it really was created at the dawn of time.

The second period that is often relevant to a traditional property is its period of use for traditional purposes. Although direct, physical evidence for such use at particular periods in the past may be rare in the case of properties used by native American groups, it is usually possible to fix a period of use, at least in part, in ordinary chronological time. Establishing the period of use often involves the weighing of indirect evidence and inference. Interviews with traditional cultural authorities are usually the main sources of data, sometimes, supplemented by the study of historical accounts or by archeological investigations. Based on such sources of data it should be possible at least to reach supportable inferences about whether generations before the present one have used a property for traditional purposes, suggesting that it was used for such purposes more than fifty years ago. It is seldom possible to determined when the traditional use of property began, however—this tends to be lost, as it were, in the mists of antiquity.

**Boundaries**

Defining the boundaries of a traditional cultural property can present considerable problems. In the case of the Helkau Historic District in northern California, for example, much of the significance of the property in the eyes of its traditional users is related to the fact that it is quiet, and that it presents extensive views of natural landscape without modern intrusions.
These factors are crucial to the medicine making done by traditional religious practitioners in the district. If the boundaries of the district were defined on the basis of these factors, however, the district would take in a substantial portion of California's North coast Range. Practically speaking, the boundaries of a property like the Helkau District must be defined more narrowly, even though this may involve making some rather arbitrary decisions. In the case of the Helkau District, the boundary was finally drawn along topographic lines that included all the locations at which traditional practitioners carry out medicine-making and similar activities, the travel routes between such locations, and the immediate viewshed surround this complex of locations and routes.

In defining boundaries, the traditional uses to which the property is put must be carefully considered. For example, where a property is used as the Helkau District is used, for contemplative purposes, viewsheds are important and must be considered in boundary definition. In an urban district significant for its association with a given social group, boundaries might be established where residence or use by the group ends, or where such residence or use is no longer reflected in the architecture or spatial organization of the neighborhood. Changes in boundaries through time should also be taken into consideration. For example, archeological evidence may indicate that a particular cultural practice occurred within particular boundaries in the past, but the practice today may occur within different boundaries perhaps larger, perhaps smaller, perhaps covering different areas. The fact that such changes have taken place, and the reasons they have taken place, if these can be ascertained, should be documented and considered in developing a rationale for the boundaries identified in the nomination or eligibility documentation.

Describing the setting

The fact that the boundaries of a traditional cultural property may be drawn more narrowly than they would be if they included all significant viewsheds or lands on which noise might be intrusive on the practices that make the property significant does not mean that visual or auditory intrusions occurring outside the boundaries can be ignored. In the context of eligibility determination or nomination, such intrusions if severe enough may compromise the property's integrity. In planning subsequent to nomination or eligibility determination, the Advisory Council's regulations define "isolation of the property from or alteration of the character of the property's setting" as an adverse effect "when that character contributes to the property's qualification for the National Register" (36 CFR 800.9(b)(2)). Similarly, the Council's regulations define as adverse effects "introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting" (36 CFR 800.9(b)(3)). To assist in determining whether a given activity outside the boundaries of a traditional cultural property may constitute an adverse effect, it is vital that the nomination form or eligibility documentation discuss those qualities of a property's visual, auditory, and atmospheric setting that contribute to its significance, including those qualities whose expression extends beyond the boundaries of the property as such into the surrounding environment.

(2) For details regarding maintaining confidentiality, see Guidelines for Restricting Information About Historic and Prehistoric Resources by contacting the National Register of Historic Places, National Park Service, Department of Interior.
Documenting Traditional Cultural Properties: General Considerations

Generally speaking, documentation of a traditional cultural property, on a National Register nomination form or in eligibility documentation, should include a presentation of the results of interviews and observations that systematically describe the behavior, beliefs, and knowledge that are germane to understanding the property's cultural significance, and an organized analysis of these results. The data base from which the formal nomination or eligibility determination documents are derived should normally include appropriate tape recordings, photographs, field notes, and primary written records.

Obtaining and presenting such documentation can present special challenges, however. First, those who ascribe significance to the property may be reluctant to allow its description to be committed to paper, or to be filed with a public agency that might release information about it to inappropriate people. Second, documentation necessarily involves addressing not only the physical characteristics of the property as perceived by an outside observer, but culturally significant aspects of the property that may be visible or knowable only to those in whose traditions it is significant. Third, boundaries are often difficult to define. Fourth, in part because of the difficulty involved in defining boundaries, it is important to address the setting of the property.

The problem of confidentiality

Particularly where a property has supernatural connotations in the minds of those who ascribe significance to it, or where it is used in ongoing cultural activities that are not readily shared with outsiders, it may be strongly desired that both the nature and the precise location of the property be kept secret. Such a desire on the part of those who value a property should of course be respected, but it presents considerable problems for the use of National Register data in planning. In simplest terms, one cannot protect a property if one does not know that it is there.
The need to reveal information about something that one's cultural system demands be kept secret can present agonizing problems for traditional groups and individuals. It is one reason that information on traditional cultural properties is not readily shared with Federal agencies and others during the planning and environmental review of construction and land use projects. However concerned one may be about the impacts of such a project on a traditional cultural property, it may be extremely difficult to express these concerns to an outsider if one's cultural system provides no acceptable mechanism for doing so. These difficulties are sometimes hard for outsiders to understand, but they should not be underrated. In some cultures it is sincerely believed that sharing information inappropriately with outsiders will lead to death or severe injury to one's family or group.

As noted above, information on historic properties, including traditional cultural properties, may be kept confidential under the authority of Section 304 of the National Historic Preservation Act (2). This may not always be enough to satisfy the concerns of those who value, but fear the results of releasing information on, traditional cultural properties. In some cases these concerns may make it necessary not to nominate such properties formally at all, or not to seek formal determinations of eligibility, but simply to maintain some kind of minimal data in planning files. For example, in planning deployment of the MX missile system in Wyoming, the Air Force became aware that the Lakota Indian tribe in the area had concerns about the project's impacts on traditional cultural properties, but was unwilling to identify and document the precise locations and significance of such properties. To resolve this problem, Air Force representatives met with the tribe's traditional cultural authorities and indicated where they wanted to construct the various facilities required by the deployment; the tribe's authorities indicated which of these locations were likely to present problems, without saying what the nature of the problems might be. The Air Force then designed the project to minimize use of such areas. In a narrow sense, obviously, the Air Force did not go through the process of evaluation recommended by this Bulletin; no specific properties were identified or evaluated to determine their eligibility for inclusion in the National Register. In a broader sense, however, the Air Force's approach represents excellent practice in the identification and treatment of traditional cultural properties. The Air Force consulted carefully and respectfully with those who ascribed traditional cultural significance to properties in the area, and sought to accommodate their concerns. The tribe responded favorably to this approach, and did not take undue advantage of it. Presumably, had the tribe expressed concern about such expansive or strategically located areas as to suggest that it was more interested in impeding the deployment than in protecting its valued properties the Air Force would have had to use a different approach.

In summary: the need that often exists to keep the location and nature of a traditional cultural property secret can present intractable problems. These must be recognized and dealt with flexibly, with an understanding of the fact that the management problems they may present to Federal agencies or State Historic Preservation Officers may pale into insignificance when compared with the wrenching cultural conflicts they may present to those who value the properties.

Documenting visible and non-visible characteristics

Documentation of a traditional cultural property should present not only its contemporary physical appearance and, if known, its historical appearance, but also the way it is described in the relevant traditional belief or practice. For example, one of the important cultural
locations on Mt. Tonaachaw in Truk is an area called "Neepisaram," which physically looks like nothing but a grassy slope near the top of the mountain. In tradition, however, it is seen as the ear of "kuus," a metaphorical octopus identified with the mountain, and as the home of "Saraw," a warrior spirit/barracuda. Obviously a nomination of "Neepisaram" would be incomplete and largely irrelevant to its significance if it identified it only as a grassy slope near the top of the mountain.

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(2) For details regarding maintaining confidentiality, see Guidelines for Restricting Information About Historic and Prehistoric Resources by contacting the National Register of Historic Places, National Park Service, Department of Interior.
Documenting Traditional Cultural Properties: Completing Registration Forms

The following discussion is organized with reference to the National Register of Historic Places Registration Form (NPS 10-900), which must be used in nominating properties to the National Register. To the extent feasible, documentation supporting a request for a determination of eligibility should be organized with reference to, and if possible using, the Registration Form as well. Where the instructions given in National Register Bulletin: How to Complete the National Register Registration Form, are sufficient without further discussion, this is indicated.

1. Name of Property

The name given a traditional cultural property by its traditional users should be entered as its historic name. Names, inventory reference numbers, and other designations ascribed to the property by others should be entered under other names/site number.

2. Location

Follow How to Complete the National Register Registration Form but note discussion of the problem of confidentiality above.

3. Classification

Follow How to Complete the National Register Registration Form.

4. State/Federal Agency Certification

Follow How to Complete the National Register Registration Form.

5. National Park Service Certification

http://www.cr.nps.gov/nr/publications/bulletins/nrb38/nrb%2038%20page%206.htm 8/30/2005
To be completed by National Register.

6. Function or Use

Follow *How to Complete the National Register Registration Form*.

7. Description

Follow *How to Complete the National Register Registration Form* as applicable. It may be appropriate to address both visible and non-visible aspects of the property here, as discussed under General Considerations above; alternatively, non-visible aspects of the property may be discussed in the statement of significance.

8. Statement of Significance

Follow *How to Complete the National Register Registration Form*, being careful to address significance with sensitivity for the viewpoints of those who ascribe traditional cultural significance to the property.

9. Major Bibliographical References

Follow *How to Complete the National Register Registration Form*. Where oral sources have been employed, append a list of those consulted and identify the locations where field notes, audio or video tapes, or other records of interviews are housed, unless consultants have required that this information be kept confidential; if this is the case, it should be so indicated in the documentation.

10. Geographical Data

Follow *How to Complete the National Register Registration Form* as applicable, but note the discussion of boundaries and setting under General Considerations above. If it is necessary to discuss the setting of the property in detail, this discussion should be appended as accompanying documentation and referenced in this section.

11. Form Prepared By

Follow *How to Complete the National Register Registration Form*.

Accompanying Documentation

Follow *How to Complete the National Register Registration Form*, except that if the group that ascribes cultural significance to the property objects to the inclusion of photographs, photographs need not be included. If photographs are not included, provide a statement explaining the reason for their exclusion.
Conclusion

The National Historic Preservation Act, in its introductory section, establishes that "the historical and cultural foundations of the Nation should be preserved as a living part of our community life in order to give a sense of orientation to the American people" (16 U.S.C. 470(b)(2)). The cultural foundations of America's ethnic and social groups, be they Native American or historical immigrant, merit recognition and preservation, particularly where the properties that represent them can continue to function as living parts of the communities that ascribe cultural value to them. Many such properties have been included in the National Register, and many others have been formally determined eligible for inclusion, or regarded as such for purposes of review under Section 106 of the Act. Federal agencies, State Historic Preservation Officers, and others who are involved in the inclusion of such properties in the Register, or in their recognition as eligible for inclusion, have raised a number of important questions about how to distinguish between traditional cultural properties that are eligible for inclusion in the Register and those that are not. It is our hope that this Bulletin will help answer such questions.
Recommended Bibliography and Sources

List of National Register Bulletins

Federal Standards and Guidelines

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1988 American Indian Religious Freedom. Special Supplement to Indian Affairs, Number 116, New York, NY

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U.S. Department of the Interior

Walker, Deward E., Jr.

White, D.R.M. (ed.)


Created *September 12, 1995*
Appendix I: A Definition of "Culture"

Early in this Bulletin a shorthand definition of the word "culture" is used. A longer and somewhat more complex definition is used in the National Park Service's internal cultural resource management guidelines (NPS-28). This definition is consistent with that used in this Bulletin, and may be helpful to those who require further elucidation of the term. The definition reads as follows:

"Culture (is) a system of behaviors, values, ideologies, and social arrangements. These features, in addition to tools and expressive elements such as graphic arts, help humans interpret their universe as well as deal with features of their environments, natural and social. Culture is learned, transmitted in a social context, and modifiable. Synonyms for culture include lifeways, 'customs,' traditions,' social practices;' and folkways.' The terms folk culture' and folklife' might be used to describe aspects of the system that are unwritten, learned without formal instruction, and deal with expressive elements such as dance, song, music and graphic arts as well as storytelling."

http://www.cr.nps.gov/nr/publications/bulletins/nrb38/nrb38%20apendix%201.htm 8/30/2005
Appendix II: Professional Qualifications: Ethnography

When seeking assistance in the identification, evaluation, and management of traditional cultural properties, agencies should normally seek out specialists with ethnographic research training, typically including, but not necessarily limited to:

I. Language skills: it is usually extremely important to talk in their own language with those who may ascribe value to traditional cultural properties. While ethnographic fieldwork can be done through interpreters, ability in the local language is always preferable.

II. Interview skills, for example:

* The ability to approach a potential informant in his or her own cultural environment, explain and if necessary defend one's research, conduct an interview and minimize disruption, elicit required information, and disengage from the interview in an appropriate manner so that further interviews are welcome; and

* The ability to create and conduct those types of interviews that are appropriate to the study being carried out, ensuring that the questions asked are meaningful to those being interviewed, and that answers are correctly understood through the use of such techniques as translating and back-translating. Types of interviews normally carried out by ethnographers, one or more of which may be appropriate during evaluation and documentation of a traditional cultural property, include:

  * semi-structured interview on a broad topic;
  * semi-structured interview on a narrow topic;
  * structured interview on a well defined specific topic; open ended life history/life cycle interview; and
Appendix 2: Guidelines for Evaluating and Documenting Traditional Cultural Properties, ...

- genealogical interview.

III. Skill in making and accurately recording direct observations of human behavior, typically including:

* The ability to observe and record individual and group behavior in such a way as to discern meaningful patterns; and

* The ability to observe and record the physical environment in which behavior takes place, via photography, mapmaking, and written description.

IV. Skill in recording, coding, and retrieving pertinent data derived from analysis of textural materials, archives, direct observation, and interviews.

Proficiency in such skills is usually obtained through graduate and post-graduate training and supervised experience in cultural anthropology and related disciplines, such as folklore/folklife.

Created September 12, 1995
Consulting with Indian Tribes in the Section 106 Review Process (from Advisory Council on Historic Preservation website)

Introduction

The Section 106 Review Process

- Consultation with Indian Tribes for Undertakings On or Affecting Tribal Lands
- Consultation with Indian Tribes for Undertakings off Tribal Lands
- Other Opportunities and Consultation Requirements

Introduction

This guidance is a clarification of the requirements for Federal agencies to consult with Indian tribes in the Advisory Council on Historic Preservation's (ACHP's) regulations, "Protection of Historic Properties" (36 CFR Part 800), implementing Section 106 of the National Historic Preservation Act (NHPA). Accordingly, it outlines when Federal agencies must consult with Indian tribes and what the consultation must address. It is not meant to be a comprehensive guide on consultation and, thus, does not address how Federal agencies conduct consultation or which Indian tribes to contact regarding specific projects.

The National Historic Preservation Act

The National Historic Preservation Act, amended in 1992, is the basis for the tribal consultation provisions in ACHP's regulations. The two amended sections of NHPA that have a direct bearing on the Section 106 review process are Section 101(d)(6)(A), which clarifies that historic properties of religious and cultural significance to Indian tribes may be eligible for listing in the National Register, and Section 101(d)(6)(B), which requires Federal agencies, in carrying out their Section 106 responsibilities, to consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking. ACHP's regulations incorporate these provisions and reflect other directives about tribal consultation from Executive orders, Presidential memoranda, and other authorities.

Section 106

Section 106 of NHPA requires Federal agencies to consider the effects of their actions on historic properties and to seek comments from ACHP. The purpose of Section 106 is to avoid unnecessary harm to historic properties from Federal actions. Commonly known as Section 106 review, the procedure for meeting Section 106 requirements is defined in ACHP's regulations, "Protection of Historic Properties" (36 CFR Part 800). The regulations include both general direction regarding consultation and specific requirements at each stage of the review process.
What ACHP's regulations say about consultation with Indian tribes

Section 800.2(c)(2) of the regulations outlines important principles and general directions to Federal agencies regarding consultation:

- The regulations remind Federal agencies that historic properties of religious and cultural significance to an Indian tribe may be located on ancestral, aboriginal, or ceded lands of that tribe. Accordingly, agencies must make a reasonable and good faith effort to identify Indian tribes that attach such significance but may now live at great distances from the undertaking's area of potential effect.
- Federal agencies should be respectful of tribal sovereignty in conducting consultation and must recognize the government-to-government relationship that exists between the Federal Government and federally recognized Indian tribes.
- The regulations also provide for an Indian tribe to enter into an agreement with a Federal agency regarding any aspect of tribal participation in the review process. The agreement may provide the Indian tribe with additional participation or concurrence in agency decisions under Section 106 provided that no modification is made to the roles of other parties without their consent.

Is consultation with Indian tribes required only when an undertaking will occur on or affect historic properties on tribal lands?

No, NHPA and ACHP's regulations require Federal agencies to consult with Indian tribes when they attach religious and cultural significance to a historic property regardless of the location of that property. The circumstances of history may have resulted in an Indian tribe now being located a great distance from its ancestral homelands and places of importance. It is also important to note that while an Indian tribe may not have visited a historic property in the recent past, its importance to the tribe or its significance as a historic property of religious and cultural significance may not have diminished for purposes of Section 106.

Does a property of traditional cultural and religious importance requiring agency consultation with tribes under Section 101(d)(6) of NHPA have to be determined eligible for the National Register or meet the National Register criteria?

Yes. NHPA only requires consultation with Indian tribes and Native Hawaiian organizations regarding those properties of traditional religious and cultural importance that are listed in or eligible for the National Register. However, agencies should be aware that Sections 800.4(a) and (b) require them to consult with Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to a property when the agency carries out the identification and National Register evaluation of potential historic properties. Likewise, Executive Order 13007, the American Indian Religious Freedom Act, or other authorities may impose obligations, independent of Section 106 and NHPA, with regard to Indian sacred sites that do not meet the National Register criteria. Agencies should review their own internal policies in that regard.

If there are no federally recognized Indian tribes in the State where the project is located, does the Federal agency still have to consult with any tribes?

The Federal agency has to make a reasonable and good faith effort to identify Indian tribes that may have an interest. The present absence of federally recognized Indian tribes in a State does
not absolve the agency of its obligations to make a reasonable and good faith effort to identify Indian tribes that should be consulted. The circumstances of history may have resulted in an Indian tribe now being located a great distance from its ancestral homelands and places of importance.

What is a Federal agency's responsibility to consult with a State-recognized Indian tribe or non-recognized Native American group?
Under ACHP's regulations at Section 800.2(c)(5), the Federal agency may invite such groups to participate in consultation based on a demonstrated interest in the undertaking's effects on historic properties. However, the term "Indian tribe" in NHPA refers only to Federally recognized Indian tribes. Accordingly, under NHPA and ACHP's regulations, only a federally recognized Indian tribe has the right to participate in Section 106 consultation.

Where can I find information on Indian tribes?
The Department of Interior, Bureau of Indian Affairs (BIA) maintains a list of federally recognized Indian tribes and posts this information on its Web page at www.doi.gov/bureau-indian-affairs. There are also BIA regional offices throughout the country.

How does a Federal agency consult with an Indian tribe that does not want to divulge information about a historic property of religious and cultural significance?
An Indian tribe may not wish to divulge information, or may be prohibited from disclosing certain kinds of information, about certain historic properties. Therefore, the Federal agency should remain flexible in its approach to identification and evaluation of historic properties and consultation to resolve adverse effects.

Section 304 of NHPA provides protection from public disclosure of information about a historic property that might result in harm to the property, a significant invasion of privacy, or impediments to traditional religious practice at a site. ACHP's regulations include reminders of the need for Federal agencies to consider tribal and public concerns regarding sensitivity of information.

Several Indian tribes assert that they have an interest in a historic property. Is the Federal agency obligated to consult with all of them? What if the tribes disagree?
Federal agencies should keep in mind that there may be multiple Indian tribes that attach significance to a historic property. There may also be Indian tribes that attach significance to historic properties on another Indian tribe's lands. The Federal agency is obligated to consult with each of the Indian tribes and may have to approach the consultation with flexibility. It is often the case that all consulting parties do not agree. Federal agencies should approach all such consultation with an open mind, carefully weighing the views of all parties in concluding the Section 106 review process.

If the Federal agency has not identified an Indian tribe nor invited that tribe to participate, what can the Indian tribe do?
The tribe may write to the Federal agency requesting to be a consulting party. If the tribe is one that attaches religious and cultural significance to a historic property in the area of potential effect, the tribe must be considered a consulting party by the agency.
The Section 106 Review Process

The following guidance is divided into two major sections: consultation on tribal lands and consultation off tribal lands. While the basic steps of the review process are the same for undertakings on or affecting properties on tribal lands and undertakings off tribal lands, there are some differences in the consultation requirements. The guidance is structured this way to help clarify consultation requirements for instructional purposes only.

Consultation with Indian Tribes for Undertakings On or Affecting Tribal Lands

Federal agencies should recognize that in addition to the consultation requirements embodied in ACHP's regulations, tribal sovereignty and other authorities also influence consultation, may dictate additional consultation, and further strengthen an Indian tribe's position in the Federal decisionmaking process.

ACHP's regulations recognize an Indian tribe's sovereign authority on its tribal lands in several ways. The regulations require the Federal agency to provide an Indian tribe an opportunity to review, and, thus, to concur in or object to, agency findings and determinations. The regulations also require Federal agencies to invite the tribe to sign memoranda of agreement (MOAs), and if the tribe terminates consultation, ACHP must comment to the head of the agency rather than execute an agreement without the tribe. Federal agencies should be aware, however, that the sovereign status of Indian tribes on their lands may dictate other obligations and requirements in addition to those outlined in ACHP's regulations.

I. Initiation of the Section 106 Process

One of the first steps a Federal agency takes is to determine if the undertaking may occur on or affect historic properties on tribal lands and, if so, whether the Indian tribe has assumed the duties of the State Historic Preservation Officer (SHPO) under Section 101(d)(2)(D) of NHPA.

If a tribe has assumed the duties of the SHPO, does the SHPO still participate in consultation for undertakings on tribal lands?

Only if a non-tribal property owner within the exterior boundaries of the reservation requests that the SHPO participates, or if the Tribal Historic Preservation Officer (THPO) and agency agree to invite the SHPO to participate, does the SHPO still participate in consultation for undertakings on tribal lands. In all other cases, the Federal agency consults with the THPO in lieu of the SHPO on tribal lands.

What is the purpose of the provision that allows property owners on tribal lands to request SHPO participation in addition to the THPO?

The provision, following the express language of Section 101(d)(2)(D)(iii) of NHPA, provides that a non-tribal property owner who owns lands within the exterior boundaries of a reservation can request the SHPO to participate in a Section 106 consultation even when the tribe has assumed the role of the SHPO. It is designed to provide an opportunity for a property owner, whose interests in historic preservation may not necessarily be represented by the THPO, to include the SHPO in the consultation.
Does the THPO have the same role and responsibilities in the Section 106 process on tribal lands as the SHPO does off tribal lands?
Yes, the THPO carries out all of the Section 106 review functions of the SHPO and is bound to respond to requests to review an agency's findings and determinations within the time frames set by the regulations. Failure of a THPO to respond when there is such a time frame permits the agency to assume concurrence with a finding or determination or to consult with ACHP in the THPO's absence. Subsequent involvement by the THPO is not precluded but the THPO cannot reopen a finding or determination that it failed to respond to in a timely manner earlier in the process.

When there is no THPO, who represents the tribe in consultation for an undertaking on tribal land, including signing an MOA on behalf of the tribe?
Tribal participation in the Section 106 process is conducted through the tribe's official governmental structure. The formal representation, including designation of the tribal signatory for the tribe, is determined by the tribe in accordance with tribal law, internal structure, and governing procedures. Other tribal members who wish to participate in the Section 106 process must do so as members of the public and may seek to become consulting parties with the consent of the Agency Official. However, the views of the Indian tribe are provided only by an officially designated representative of the tribal government.

When there is no THPO, does the agency also consult with the SHPO?
Yes, the agency consults with the tribal designated representative and the SHPO when there is no THPO. If the SHPO withdraws from consultation, the Federal agency and the tribal representative may complete the review process. An Indian tribe may enter into an agreement with the SHPO specifying the SHPO's participation in the Section 106 review process on tribal lands.

Does the Federal agency have to consult with other Indian tribes when the undertaking is on tribal lands?
A Federal agency must make a reasonable and good faith effort to identify Indian tribes that attach religious and cultural significance to historic properties affected by the undertaking. Some tribes may attach such significance to historic properties located on another tribe's lands. The Federal agency must consult with them as well. While this may present challenges in carrying out consultation, it does not absolve the Federal agency from the obligation to consult. The Federal agency must respect a tribe's sovereignty in matters such as access to historic properties within the reservation. Accordingly, it may be necessary for the agency to consult with each tribe individually and to do so off the reservation.

II. Identification of Historic Properties

What are the consultation requirements at this stage of the process?
The Federal agency is required to consult with the THPO/tribal representative: 1) to determine and document the area of potential effects;
2) to review existing information;
3) to seek information from consulting parties and gather information from Indian tribes to assist in identifying historic properties which may be of religious and cultural significance; and
4) to carry out identification and to evaluate the National Register eligibility of identified historic properties.

**What happens if there is a disagreement between the SHPO and tribal representative on National Register eligibility?**
The concurrence of both the SHPO and the tribal representative is required for an agency's determination of eligibility or ineligibility to stand. If either disagrees, the Federal agency is obligated to seek a formal determination of eligibility from the Keeper of the National Register.

**What happens if there is a disagreement between the THPO and the agency on National Register eligibility?**
The agency must seek a formal determination of eligibility.

### III. Assessment of Adverse Effects

**What are the consultation requirements at this step?**
The Federal agency consults with the THPO/tribal representative: 1) to apply the *Criteria of Adverse Effect* to historic properties within the area of potential effects, and 2) in reaching a finding of "no adverse effect."

**What happens if there is a disagreement between the THPO/tribal representative and the agency on a finding of "no adverse effect"?**
If the THPO/tribal representative disagrees within the 30-day review period, the agency must either consult with the THPO/tribal representative to resolve the disagreement or request ACHP to review the finding.

### IV. Resolution of Adverse Effects

**What are the consultation requirements at this step?**
The Federal agency consults with the THPO/tribal representative and other consulting parties in an attempt to develop and evaluate alternatives or modifications to the undertakings to avoid, minimize, or mitigate adverse effects. Any consulting party may request ACHP to participate in this consultation.

**What happens if agreement is reached?**
The Federal agency and consulting parties, including Indian tribes, develop an MOA outlining how the adverse effects will be resolved. The Federal agency must invite the THPO/tribal representative to be a signatory to an MOA.

**What happens if the Federal agency and the THPO/tribal representative fail to agree?**
The agency must then invite ACHP to join the consultation. The THPO/tribal representative may determine that further consultation will not be productive and terminate consultation. The tribe must then notify the agency and other consulting parties of the determination and the reasons for terminating. ACHP must comment when the Indian tribe terminates consultation since the agency and ACHP cannot execute an agreement without the tribe.
When an undertaking takes place or affects historic properties on tribal lands, can a two-party agreement be concluded between an agency and an Indian tribe when the SHPO opts out of consultation even though the tribal representative is not a THPO?
Yes, because such a tribe has the same rights as a THPO. An Indian tribe may reach agreement with a Federal agency on the terms of an MOA. Execution of the MOA by a tribal representative and the Agency Official (along with filing the MOA with ACHP) would complete the Section 106 process.

Consultation with Indian Tribes for Undertakings off Tribal Lands

I. Initiation of the Section 106 Process

If the undertaking will not occur on or affect historic properties on tribal lands, is the Federal agency required to consult with Indian tribes?
Yes, Section 101(d)(6)(B) of NHPA requires consultation with Indian tribes that attach religious and cultural significance to historic properties (hereinafter "relevant Indian tribes"). The Federal agency must make a reasonable and good faith effort to identify such Indian tribes and invite them to be consulting parties. If such Indian tribes have not been invited by the agency to consult, the tribes may request in writing to be consulting parties and must be considered as such by the agency.

II. Identification of Historic Properties

In the initial information gathering steps, does the Federal agency consult with Indian tribes?
The Federal agency consults with the SHPO to determine and document the area of potential effects, review existing information, seek information from consulting parties, and gather information from Indian tribes to assist in identifying historic properties that may be of religious and cultural significance.

Does the Federal agency consult with Indian tribes to carry out identification and evaluation of historic properties?
Yes, the Federal agency consults with the SHPO and relevant Indian tribes to carry out identification and to evaluate the National Register eligibility of identified historic properties.

Does the Federal agency need to obtain a relevant Indian tribe's concurrence with eligibility findings?
No, but the Federal agency must acknowledge that Indian tribes possess special expertise in assessing the eligibility of historic properties that may be of significance to them. Also, if an Indian tribe disagrees with an agency's determination of eligibility, the Indian tribe may ask ACHP to request the agency to obtain a determination from the Keeper of the National Register. However, ACHP retains the discretion as to whether or not it should make the request of the Federal agency.

Does an agency consult with a relevant Indian tribe in determining if there are historic properties affected?
No, but the agency does provide notification of the finding to relevant Indian tribes and makes the documentation available for public inspection.

What happens when the Federal agency finds that there are historic properties which may be affected by the undertaking?
The agency notifies relevant Indian tribes, invites their views on the effects, and proceeds to assess adverse effects, if any.

III. Assessment of Adverse Effects

Which parties does the Federal agency consult with to apply the Criteria of Adverse Effect to historic properties within the areas of potential effect?
The agency consults with the SHPO and relevant Indian tribes to apply the Criteria of Adverse Effect to historic properties within the areas of potential effect.

When proposing a finding of "no adverse effect," does the agency consult with Indian tribes?
No, the agency consults with the SHPO in reaching a finding of "no adverse effect" and notifies consulting parties including relevant Indian tribes and provides them with documentation.

What happens if a relevant Indian tribe disagrees with a finding of no adverse effect?
If a relevant Indian tribe disagrees with a finding of no adverse effect, it must specify in writing the reasons within the 30-day review period. When a timely filing of disagreement is received, the Federal agency must either resolve the disagreement or request ACHP to review the "no adverse effect" finding. Relevant Indian tribes can also request ACHP to review an agency's finding. The agency should seek the concurrence of Indian tribes that attach religious and cultural significance to the historic property subject to the finding. This means that the agency is encouraged, but not legally required, to obtain such concurrence. If the relevant Indian tribe does not concur and disagrees with the proposed finding, it can refer the matter directly to ACHP for resolution.

IV. Resolution of Adverse Effects

Which parties does the Federal agency consult with to develop and evaluate alternatives or modifications to the undertakings to avoid, minimize, or mitigate adverse effects?
The Federal agency consults with the SHPO, relevant Indian tribes, and other consulting parties.

What happens if agreement is reached?
If agreement is reached, the Federal agency and consulting parties, including relevant Indian tribes, develop an MOA outlining how the adverse effects will be addressed.

Is the Federal agency obligated to invite a relevant Indian tribe to sign or concur with the MOA?
No, the agency may, but is not required to, invite the relevant Indian tribe to sign or concur. An Indian tribe that signs the MOA has the same rights with regard to seeking amendment or termination of the agreement as the other signatories. Refusal by a relevant Indian tribe to sign or concur, however, does not invalidate the MOA.

**What happens if agreement is not reached?**
If agreement is not reached, the Federal agency, SHPO, or ACHP, if participating, may terminate consultation. Other consulting parties, including relevant Indian tribes, may decline to participate but they cannot terminate consultation. After consultation is terminated, ACHP issues its formal comments to the agency head.

**Other Opportunities and Consultation Requirements**

**Requests from Indian Tribes for ACHP Participation in Consultation**
Any party, including Indian tribes, may request that ACHP review the substance of any agency's finding, determination, or decision on the adequacy of an agency's compliance with the regulation. An Indian tribe may request that ACHP enter the Section 106 review process because of concerns about the identification of, evaluation of, or assessment of effects on, historic properties. An Indian tribe may request ACHP involvement in the resolution of adverse effects or where there are questions about policy, interpretation, or precedent under Section 106 or its relation to other authorities such as the Native American Graves Protection and Repatriation Act (see Appendix A of the regulations).

**Consultation with Indian Tribes in the Development of Program Alternatives**
The Federal agency must conduct government-to-government consultation with affected THPOs or tribal representatives, and relevant Indian tribes in the development of program alternatives.

If a program alternative includes undertakings that would affect historic properties on tribal lands, the agency must identify and consult with the Indian tribes having jurisdiction over such lands. A Programmatic Agreement only takes effect on tribal lands when the THPO, Indian tribe, or designated tribal representative is a signatory to the agreement.

If a program alternative may affect historic properties of religious and cultural significance to an Indian tribe located off tribal lands, the agency must identify those Indian tribes and consult with them.

When the proposed program alternative has nationwide applicability, the agency must develop and implement appropriate government-to-government consultation with Indian tribes in accordance with existing Executive orders, Presidential memoranda, and applicable laws.

In all cases, the agency and ACHP must take into account the views of Indian tribes in reaching a final decision.

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'NHPA defines "Indian tribe" as "an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which
is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians" (16 U.S.C. 470w).

The 1992 amendments included provisions for Indian tribes to assume the responsibility of the SHPO on tribal lands. The regulations use the term "THPO" to mean the Tribal Historic Preservation Officer under Section 101(d)(2).

ACHP Updated August 22, 2005
Advisory Council on Historic Preservation (ACHP) Policy Statement Regarding ACHP's Relationships with Indian Tribes

(from ACHP website 8/28/05)

Adopted by the Advisory Council on Historic Preservation
November 17, 2000, Alexandria, Virginia

Introduction
I. Purpose
II. Statements of Policy
III. Implementation of the ACHP’s Policy

Introduction

The Federal Government has a unique relationship with Indian tribes derived from the Constitution of the United States, treaties, Supreme Court doctrine, and Federal statutes. It is deeply rooted in American history, dating back to the earliest contact in which colonial governments addressed Indian tribes as sovereign nations. The Advisory Council on Historic Preservation (ACHP), as a Federal agency, recognizes the government-to-government relationship between the United States and federally recognized Indian tribes and acknowledges Indian tribes as sovereign nations with inherent powers of self-governance. This relationship has been defined and clarified over time in legislation, Executive Orders, Presidential directives, and by the Supreme Court.

The ACHP’s policy pertains to Indian tribes as defined in the National Historic Preservation Act of 1966:

Indian tribe means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians (16 U.S.C. 470w).
I. Purpose

The basis for the ACHP’s policy regarding its role, responsibilities, and relationships with individual Indian tribes derives from the Constitution, treaties, statutes, executive orders, regulations, and court decisions. It specifically ensures the ACHP’s compliance with and recognition of its tribal consultation responsibilities under certain authorities, including:

National Historic Preservation Act (Act)
National Environmental Policy Act (NEPA)
American Indian Religious Freedom Act (AIRFA)
Native American Graves Protection and Repatriation Act (NAGPRA)
Executive Order 13007--Indian Sacred Sites (EO 13007)
Executive Order 13175--Consultation & Coordination with Indian Tribal Governments
Executive Order 12898--Executive Order on Environmental Justice (EO 12898)
and the implementing regulations for these authorities.

This policy establishes the framework by which the ACHP integrates the concepts of tribal sovereignty, government-to-government relations, trust responsibilities, tribal consultation, and respect for tribal religious and cultural values into its administration of the Section 106 process and its other activities. The policy sets forth general principles that will guide the ACHP’s interaction with Indian tribes as it carries out its responsibilities under the Act. It also provides guidance to the ACHP and its staff and serves as the foundation for ACHP policies and procedures regarding specific Indian tribal issues. Upon adoption of the policy, the ACHP will develop an implementation plan to assist members and staff with integrating principles of respect for tribal sovereignty, government-to-government consultation, the ACHP’s trust responsibilities, and tribal values into the conduct of ACHP business.

II. Statements of Policy

Tribal Sovereignty

A. Recognition of tribal sovereignty is the basis upon which the Federal Government establishes its relationships with Federally recognized Indian tribes. The sovereignty of Indian tribes was first recognized by the United States in treaties and was reaffirmed in the 1831 landmark Supreme Court opinion of Chief Justice John Marshall that tribes possess a nationhood status and retain inherent powers of self-governance (Cherokee Nation vs. Georgia, 30 U.S. (5 Pet.) 1 (1831)).

B. The ACHP, recognizing that each federally recognized Indian tribe retains sovereign powers, shall be guided by principles of respect for Indian tribes and their sovereign authority.

C. Additionally, the ACHP acknowledges that the sovereign status of tribes means that each tribe has the authority to make and enforce laws and establish courts and other legal systems to resolve disputes.
Government-to-Government Consultation

A. The relationship between the United States and federally recognized Indian tribes was reaffirmed in the President's Memorandum on "Government to Government Relations with Native American Tribal Governments" (April 29, 1994). The memorandum directs Federal agencies to operate "within a government-to-government relationship with federally recognized tribal governments." It also directs agencies to consult with tribes prior to making decisions that affect tribal governments and to ensure that all components in the agency are aware of the requirements of the memorandum. In addition, Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," directs Federal agencies to consult with tribal governments regarding issues which "significantly or uniquely affect their communities."

B. In recognition of the status of Federally recognized Indian tribes as sovereign authorities and in accordance with the President's Memorandum on "Government to Government Relations with Native American Tribal Governments" (April 29, 1994), the ACHP is committed to operating on the basis of government-to-government relations with Indian tribes. Together with other executive departments, the ACHP acts on behalf of the Federal Government to fulfill the intent of the President and Congress regarding government-to-government consultation. The ACHP acknowledges that Federal-tribal consultation is a bilateral process of discussion and cooperation between sovereigns.

Trust Responsibilities

A. Trust responsibilities emanate from Indian treaties, statutes, Executive orders, and the historical relationship between the Federal Government and Indian tribes. The trust responsibility applies to all executive departments and Federal agencies that may deal with Indians. This responsibility is rooted, in large part, in the treaties through which tribes ceded portions of aboriginal lands to the United States government in return for promises to protect tribal rights as self-governing communities within the reserved lands and certain rights to use resources off of the reserved lands.

In general, the trust responsibility establishes fiduciary obligations to the tribes including duties to protect tribal lands and cultural and natural resources for the benefit of tribes and individual tribal members/land owners. This trust responsibility must guide Federal policies and provide for government-to-government consultation with tribes when actions may affect tribes and their resources.

B. The ACHP recognizes that it has a trust responsibility to federally recognized Indian tribes and views this trust responsibility as encompassing all aspects of historic resources including intangible values. The ACHP shall be guided by principles of respect for the trust relationship between the Federal Government and federally recognized Indian tribes. The ACHP will ensure that its actions, in carrying out its responsibilities under the Act, are consistent with the protection of tribal rights arising from treaties, statutes, and Executive orders.
Tribal Participation in Historic Preservation

The ACHP will consult with tribal leaders, and, as appropriate, their representatives including Tribal Historic Preservation Officers (THPOs), in its consideration and development of policies, procedures, or programs that might affect the rights, cultural resources, or lands of federally recognized Indian tribes. The ACHP will pursue consultation in good faith and use methods and protocols that are best suited to meet the goals of this policy and the proposed action. In doing so, the ACHP will recognize and maintain direct government-to-government consultation with tribes in lieu of consortiums, unless so requested by said tribes.

In fulfilling its mission and responsibilities, the ACHP will endeavor to develop strong partnerships with federally recognized Indian tribes. To achieve this objective, the ACHP, in its implementation plan, will develop strategies for better understanding and considering the views of Indian tribes in the work of the ACHP. The ACHP will also develop means for ensuring that Indian tribes are provided the opportunity to understand their rights and roles in the Section 106 process and in any ACHP actions which might affect them. When decisions involve resources on tribal land, the ACHP, exercising its trust responsibility, will attempt to give deference to tribal resource values, policies, preferences, and resource conservation and management plans.

The ACHP fully supports the participation of federally recognized Indian tribes in the national historic preservation program and acknowledges the significant contributions of tribes in our understanding and protection of our nation’s heritage resources. The ACHP also recognizes the important role of Tribal Historic Preservation Officers (THPOs) that have assumed the role of the State Historic Preservation Officers (SHPOs) on tribal lands. The ACHP will work with Indian tribes to enhance tribal participation in historic preservation and to further the development of tribal preservation programs.

Sympathetic Construction

The principle of sympathetic construction is a consequence of the disadvantages Indian tribes faced in negotiating treaties with the United States. Treaties were negotiated and written in English often under threats of force, and dealt with concepts such as land ownership which were unfamiliar to Indian tribes. Accordingly, the Supreme Court has ruled that treaties must be interpreted as tribes would have understood the terms and to the benefit of the tribes.

The Supreme Court has also ruled that statutes passed for the benefit of tribes are to be interpreted in favor of tribes. While the application of this rule to statutes that address Indian tribes but that was not necessarily passed for their benefit has not been consistent, the ACHP acknowledges the importance of this principle to tribes. Accordingly, the ACHP, in carrying out its charges under the Act, will liberally interpret those provisions that address Indian tribes.

Respect for Tribal Religious and Cultural Values

The ACHP recognizes and respects that certain historic properties retain religious and cultural significance to federally recognized Indian tribes and that preservation of such properties may be imperative for the continuing survival of traditional tribal values and culture. Therefore, the
ACHP shall develop and implement its programs in a manner that respects these traditional tribal values and customs and strives to recognize that certain historic properties may be essential elements of actual living cultures and communities.

Furthermore, the ACHP recognizes and respects that certain information about religious or sacred places can be highly sensitive and that in certain situations, traditional tribal laws prohibit disclosure about actual function, use, religious affiliation to a specific society or group, or even precise location. Accordingly, the ACHP is, to the maximum extent feasible under existing law, committed to withholding from public disclosure such information that may be revealed in the course of a Section 106 review. The ACHP will carry out its responsibilities in a manner that respects those restrictions imposed by cultural beliefs or traditional tribal laws. In doing so, the ACHP will interpret and use the Section 106 review process in a flexible manner.

III. Implementation of the ACHP’s Policy

Implementing the policy is the responsibility of the ACHP leadership, membership, and staff. The implementation plan will provide the necessary guidance to ensure satisfactory adherence to the policy by staff and members.

Within the Executive Office, the Native American Program was formed to:

- develop and coordinate ACHP policies pertaining to Indian tribes;
- provide ACHP members and staff with information, materials, and training on the principles of tribal sovereignty, government-to-government relations, and trust responsibilities;
- assist Indian tribes in fully realizing their roles and rights in the Section 106 process; and
- assist Federal agencies in understanding and carrying out their responsibilities to Indian tribes in the Section 106 review process.

The Native American Program will take steps to ensure that staff understands tribal issues and is aware of protocols. The Native American Program Coordinator will be available to assist ACHP staff in the ACHP’s review of projects and programs that affect Indian tribes. The Native American Program and its staff will provide technical assistance with the Section 106 process to Indian tribes. Technical assistance includes guidance materials, workshops, and communication through direct mail and email, as appropriate. It also includes responding to specific requests to provide assistance to tribes who are working with Section 106.

The Native American Program will also establish appropriate systems for communicating with the tribal representatives identified by each tribe’s leadership to ensure the widest possible distribution of information on Section 106 and ACHP initiatives. In doing so, the ACHP and its Native American Program will recognize and maintain direct government-to-government consultation with tribes.

ACHP Updated April 4, 2003
EXECUTIVE ORDER 13007 – INDIAN SACRED SITES

By the authority vested in me as President by the Constitution and the laws of the United States, in furtherance of Federal treaties, and in order to protect and preserve Indian religious practices, it is hereby ordered:

Section 1. Accommodation of Sacred Sites. (a) In managing Federal lands, each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. Where appropriate, agencies shall maintain the confidentiality of sacred sites.

(b) For purposes of this order:

(i) "Federal lands" means any land or interests in land owned by the United States, including leasehold interests held by the United States, except Indian trust lands;

(ii) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Public Law No. 103-454, 108 Stat. 4791, and "Indian" refers to a member of such an Indian tribe; and

(iii) "Sacred site" means any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site.

Sec. 2. Procedures. (a) Each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall, as appropriate, promptly implement procedures for the purposes of carrying out the provisions of section 1 of this order, including, where practicable and appropriate, procedures to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites.
In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments."

(b) Within 1 year of the effective date of this order, the head of each executive branch agency with statutory or administrative responsibility for the management of Federal lands shall report to the President, through the Assistant to the President for Domestic Policy, on the implementation of this order. Such reports shall address, among other things, (i) any changes necessary to accommodate access to and ceremonial use of Indian sacred sites; (ii) any changes necessary to avoid adversely affecting the physical integrity of Indian sacred sites; and (iii) procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites.

Sec. 3. Nothing in this order shall be construed to require a taking of vested property interests. Nor shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action. For purposes of this order, "agency action" has the same meaning as in the Administrative Procedures Act (5 U.S.C.551(13)).

Sec. 4. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies officers, or any person.

WILLIAM J. CLINTON

THE WHITE HOUSE,
May 24, 1996.
The Relationship Between Executive Order 13007 Regarding Indian Sacred Sites and Section 106
(from Advisory Council on Historic Preservation's website 8/28/05)

Introduction
What Section 106 Requires
What E.O. 13007 Requires
How E.O. 13007 and Section 106 Relate

Introduction

This guidance statement addresses the relationship between the requirements of 36 CFR Part 800, "Protection of Historic Properties," regulations implementing Section 106 of the National Historic Preservation Act (Act) and Executive Order 13007 regarding Indian Sacred Sites (E.O. 13007). This is intended as guidance regarding the intersection of the requirements of the executive order and the Section 106 regulations with respect to proposed actions that may affect historic properties of religious and cultural significance to Indian tribes.

What Section 106 Requires

Section 106 requires Federal agencies to take into account the effects of an undertaking on historic properties and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. A historic property is defined in the Act as "any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property" (16 U.S.C 470w).

Section 101(d)(6)(A) of the Act clarifies that properties of traditional religious and cultural significance to an Indian tribe or Native Hawaiian organization may be eligible for the National Register of Historic Places.

ACHP's regulations outline the process by which Federal agencies meet the requirements of Section 106. The process includes the identification and evaluation of historic properties, the assessment of a proposed project's effects on such properties, and the resolution of adverse effects, including consideration of measures to avoid, minimize or mitigate adverse effects. At each step of the process, the Federal agency must consult with others and where historic properties are of religious and cultural significance to Indian tribes or Native Hawaiian organizations, the agency must consult with such tribes and organizations accordingly.
What E.O. 13007 Requires

E.O. 13007 requires Federal land managing agencies to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and to avoid adversely affecting the physical integrity of such sacred sites. It also requires agencies to develop procedures for reasonable notification of proposed actions or land management policies that may restrict access to or ceremonial use of, or adversely affect, sacred sites.

Sacred sites are defined in the executive order as "any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site." There is no review of such determinations by a Federal agency.

How E.O. 13007 and Section 106 Relate

It is important to note that a sacred site may not meet the National Register criteria for a historic property and that, conversely, a historic property may not meet the criteria for a sacred site. However, in those instances where an undertaking may affect a historic property that is also considered by an Indian tribe to be a sacred site, the Federal agency should, in the course of the Section 106 review process, consider accommodation of access to and ceremonial use of the property and avoidance of adverse physical effects in accordance with E.O. 13007.

To the extent that the requirements of the executive order and ACHP’s regulations are similar, Federal agencies can use the Section 106 review process to ensure that the requirements of E.O. 13007 are fulfilled. For example, E.O. 13007 requires that agencies contact Indian tribes regarding effects and the Section 106 regulations require consultation with Indian tribes to identify and resolve adverse effects to historic properties.

Consultation regarding the identification and evaluation of historic properties of religious and cultural significance to an Indian tribe could include identification of those properties that are also sacred sites. Similarly, consultation to address adverse effects to such historic properties/sacred sites could include discussions regarding access and ceremonial use.

While a Federal agency is not required to integrate the requirements of the executive order in the Section 106 review process, it may be beneficial for both the agency and the tribe to do so. Not only would it be more efficient to integrate the requirements, but it might also ensure that all issues and values are given appropriate and timely consideration.

ACHP Updated August 22, 2005

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

Purpose
Sec. 2 [42 USC § 4321]. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I
CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC § 4331]. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consist with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;

achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102 [42 USC § 4332].
The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretreivable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise
with respect to any environmental impact involved. Copies of such statement and the comments
and views of the appropriate Federal, State, and local agencies, which are authorized to develop
and enforce environmental standards, shall be made available to the President, the Council on
Environmental Quality and to the public as provided by section 552 of title 5, United States
Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major
Federal action funded under a program of grants to States shall not be deemed to be legally
insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such
action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval
and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and
solicits the views of, any other State or any Federal land management entity of any action or any
alternative thereto which may have significant impacts upon such State or affected Federal land
management entity and, if there is any disagreement on such impacts, prepares a written
assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities
for the scope, objectivity, and content of the entire statement or of any other responsibility under
this Act; and further, this subparagraph does not affect the legal sufficiency of statements
prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in
any proposal which involves unresolved conflicts concerning alternative uses of available
resources;

(F) recognize the worldwide and long-range character of environmental problems and, where
consistent with the foreign policy of the United States, lend appropriate support to initiatives,
resolutions, and programs designed to maximize international cooperation in anticipating and
preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and
information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of
resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103 [42 USC § 4333].

NEPA, as amended
All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104 [42 USC § 4334].
Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105 [42 USC § 4335].
The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II
COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201 [42 USC § 4341].
The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban an rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202 [42 USC § 4342].
There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to
formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203 [42 USC § 4343].
(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

Sec. 204 [42 USC § 4344].
It shall be the duty and function of the Council --

to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;

to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;

to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

to report at least once each year to the President on the state and condition of the environment; and

to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.
Sec. 205 [42 USC § 4345].
In exercising its powers, functions, and duties under this Act, the Council shall --

consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and

utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206 [42 USC § 4346].
Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].

Sec. 207 [42 USC § 4346a].
The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208 [42 USC § 4346b].
The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209 [42 USC § 4347].
There are authorized to be appropriated to carry out the provisions of this chapter not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

NEPA, as amended
(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions; under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by--

providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91-190;

assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;

reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;

promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;

assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;

collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

42 USC § 4373. Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part.
of the subject matter of the Report.

42 USC § 4374. There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91-190:

(a) $2,126,000 for the fiscal year ending September 30, 1979.

(b) $3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.

(c) $44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.

(d) $480,000 for each of the fiscal years ending September 30, 1985 and 1986.

42 USC § 4375.

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance --

study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and

Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.
PART 1500--PURPOSE, POLICY, AND MANDATE

Sec. 1500.1 Purpose.
(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork--even excellent paperwork--but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

Sec. 1500.2 Policy.

Federal agencies shall to the fullest extent possible:
(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

Sec. 1500.3 Mandate.

Parts 1500 through 1508 of this title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.) section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (May 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations does not give rise to any independent cause of action.

Sec. 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (Sec. 1502.2(c)), by means such as setting appropriate page limits (Secs. 1501.7(b)(1) and 1502.7).
(b) Preparing analytic rather than encyclopedic environmental impact statements (Sec. 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (Sec. 1502.2(b)).

(d) Writing environmental impact statements in plain language (Sec. 1502.8).

(e) Following a clear format for environmental impact statements (Sec. 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to
decisionmakers and the public (Secs. 1502.14 and 1502.15) and reducing emphasis on
background material (Sec. 1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of
study, but also to deemphasize insignificant issues, narrowing the scope of the environmental
impact statement process accordingly (Sec. 1501.7).

(h) Summarizing the environmental impact statement (Sec. 1502.12) and circulating the summary
instead of the entire environmental impact statement if the latter is unusually long (Sec. 1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements
of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues
(Secs. 1502.4 and 1502.20).

(j) Incorporating by reference (Sec. 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation
requirements (Sec. 1502.25).

(l) Requiring comments to be as specific as possible (Sec. 1503.3). (m) Attaching and circulating
only changes to the draft environmental impact statement, rather than rewriting and circulating
the entire statement when changes are minor (Sec. 1503.4(c)).

(n) Eliminating duplication with State and local procedures, by providing for joint preparation
(Sec. 1506.2), and with other Federal procedures, by providing that an agency may adopt
appropriate environmental documents prepared by another agency (Sec. 1506.3).

(o) Combining environmental documents with other documents (Sec. 1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or
cumulatively have a significant effect on the human environment and which are therefore exempt
from requirements to prepare an environmental impact statement (Sec. 1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have
a significant effect on the human environment and is therefore exempt from requirements to
prepare an environmental impact statement (Sec. 1508.13).

Sec. 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Integrating the NEPA process into early planning (Sec. 1501.2).

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (Sec. 1501.6).

(c) Insuring the swift and fair resolution of lead agency disputes (Sec. 1501.5).

(d) Using the scoping process for an early identification of what are and what are not the real issues (Sec. 1501.7).

(e) Establishing appropriate time limits for the environmental impact statement process (Secs. 1501.7(b)(2) and 1501.8).

(f) Preparing environmental impact statements early in the process (Sec. 1502.5).

(g) Integrating NEPA requirements with other environmental review and consultation requirements (Sec. 1502.25).

(h) Eliminating duplication with State and local procedures by providing for joint preparation (Sec. 1506.2) and with other Federal procedures by providing that an agency may adopt appropriate environmental documents prepared by another agency (Sec. 1506.3).

(i) Combining environmental documents with other documents (Sec. 1506.4).

(j) Using accelerated procedures for proposals for legislation (Sec. 1506.8).

(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (Sec. 1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.

(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (Sec. 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

Sec. 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.
1501.1 Purpose.

The purposes of this part include:
(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA’s policies and to eliminate delay.
(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.
(c) Providing for the swift and fair resolution of lead agency disputes.
(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.
(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:
(a) Comply with the mandate of section 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment," as specified by Sec. 1507.2.
(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.
(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.
(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

1. Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.
2. The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.
3. The Federal agency commences its NEPA process at the earliest possible time.

Sec. 1501.3 When to prepare an environmental assessment.
(a) Agencies shall prepare an environmental assessment (Sec. 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in Sec. 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.
(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

Sec. 1501.4 Whether to prepare an environmental impact statement.
In determining whether to prepare an environmental impact statement the Federal agency shall:
(a) Determine under its procedures supplementing these regulations (described in Sec. 1507.3) whether the proposal is one which:
   1. Normally requires an environmental impact statement, or
   2. Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (Sec. 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by Sec. 1508.9(a)(1).
(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.
(d) Commence the scoping process (Sec. 1501.7), if the agency will prepare an environmental impact statement.
(e) Prepare a finding of no significant impact (Sec. 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

3. The agency shall make the finding of no significant impact available to the affected public as specified in Sec. 1506.6.
4. Certain limited circumstances, which the agency may cover in its procedures under Sec. 1507.3, the agency shall make the finding of no significant impact available for public review (including State and area-wide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:
   (i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to Sec. 1507.3, or
   (ii) The nature of the proposed action is one without precedent.

Sec. 1501.5 Lead agencies.
(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:
   1. Proposes or is involved in the same action; or
   2. Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.
(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (Sec. 1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

3. Magnitude of agency's involvement.
4. Project approval/disapproval authority.
5. Expertise concerning the action's environmental effects.
6. Duration of agency's involvement.
7. Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency. A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

8. A precise description of the nature and extent of the proposed action.
9. A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

[43 FR 55992, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

 Sec. 1501.6 Cooperating agencies.
The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

1. Request the participation of each cooperating agency in the NEPA process at the earliest possible time.
2. Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.
3. Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:
4. Participate in the NEPA process at the earliest possible time.
5. Participate in the scoping process (described below in Sec. 1501.7).
6. Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.
7. Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.
8. Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b)(3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

Sec. 1501.7 Scoping. There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (Sec. 1508.22) in the Federal Register except as provided in Sec. 1507.3(e).

(a) As part of the scoping process the lead agency shall:

1. Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under Sec. 1507.3(c). An agency may give notice in accordance with Sec. 1506.6.
2. Determine the scope (Sec. 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.
3. Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (Sec. 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.
4. Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.
5. Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.
6. Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in Sec. 1502.25.
7. Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:
8. Set page limits on environmental documents (Sec. 1502.7).
9. Set time limits (Sec. 1501.8).
10. Adopt procedures under Sec. 1507.3 to combine its environmental assessment process with its scoping process.
11. Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

Sec. 1501.8 Time limits.
Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by Sec. 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: Provided, That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

1. Consider the following factors in determining time limits:

   (i) Potential for environmental harm.
   (ii) Size of the proposed action.
   (iii) State of the art of analytic techniques.
   (iv) Degree of public need for the proposed action, including the consequences of delay.
   (v) Number of persons and agencies affected.
   (vi) Degree to which relevant information is known and if not known the time required for obtaining it.
   (vii) Degree to which the action is controversial.
   (viii) Other time limits imposed on the agency by law, regulations, or executive order.

2. Set overall time limits or limits for each constituent part of the NEPA process, which may include:

   (i) Decision on whether to prepare an environmental impact statement (if not already decided).
   (ii) Determination of the scope of the environmental impact statement.
   (iii) Preparation of the draft environmental impact statement.
   (iv) Review of any comments on the draft environmental impact statement from the public and agencies.
   (v) Preparation of the final environmental impact statement.
   (vi) Review of any comments on the final environmental impact statement.
   (vii) Decision on the action based in part on the environmental impact statement.

3. Designate a person (such as the project manager or a person in the agency’s office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a Federal Agency to set time limits.
PART 1502--ENVIRONMENTAL IMPACT STATEMENT

1502.1 Purpose.
1502.2 Implementation.
1502.3 Statutory requirements for statements.
1502.4 Major Federal actions requiring the preparation of environmental impact statements.
1502.5 Timing.
1502.6 Interdisciplinary preparation.
1502.7 Page limits.
1502.8 Writing.
1502.9 Draft, final, and supplemental statements.
1502.10 Recommended format.
1502.11 Cover sheet.
1502.12 Summary.
1502.13 Purpose and need.
1502.14 Alternatives including the proposed action.
1502.15 Affected environment.
1502.16 Environmental consequences.
1502.17 List of preparers.
1502.18 Appendix.
1502.19 Circulation of the environmental impact statement.
1502.20 Tiering.
1502.21 Incorporation by reference.
1502.22 Incomplete or unavailable information.
1502.23 Cost-benefit analysis.
1502.24 Methodology and scientific accuracy.
1502.25 Environmental review and consultation requirements.


Source: 43 FR 55994, Nov. 29, 1978, unless otherwise noted.

Sec. 1502.1 Purpose.
The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

Sec. 1502.2 Implementation.
To achieve the purposes set forth in Sec. 1502.1 agencies shall prepare environmental impact statements in the following manner:
(a) Environmental impact statements shall be analytic rather than encyclopedic.
(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (Sec. 1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

Sec. 1502.3 Statutory requirements for statements.
As required by sec. 102(2)(C) of NEPA environmental impact statements (Sec. 1508.11) are to be included in every recommendation or report.

On proposals (Sec. 1508.23).
For legislation and (Sec. 1508.17).
Other major Federal actions (Sec. 1508.18).
Significantly (Sec. 1508.27).
Affecting (Secs. 1508.3, 1508.8).
The quality of the human environment (Sec. 1508.14).

Sec. 1502.4 Major Federal actions requiring the preparation of environmental impact statements.
(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (Sec. 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (Sec. 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

1. Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.
2. Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.
3. By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.
(d) Agencies shall as appropriate employ scoping (Sec. 1501.7), tiering (Sec. 1502.20), and other methods listed in Secs. 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

Sec. 1502.5 Timing.
An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (Sec. 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize or justify decisions already made (Secs. 1500.2(c), 1501.2, and 1502.2). For instance:
(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.
(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.
(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.
(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

Sec. 1502.6 Interdisciplinary preparation.
Environmental impact statements shall be prepared using an inter-disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (Sec. 1501.7).

Sec. 1502.7 Page limits.
The text of final environmental impact statements (e.g., paragraphs (d) through (g) of Sec. 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

Sec. 1502.8 Writing.
Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

Sec. 1502.9 Draft, final, and supplemental statements.
Except for proposals for legislation as provided in Sec. 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.
(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.
Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

1. Shall prepare supplements to either draft or final environmental impact statements if:

   (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

   (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

   2. May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

   3. Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

   4. Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

Sec. 1502.10 Recommended format.

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of contents.

(d) Purpose of and need for action.

(e) Alternatives including proposed action (sections 102(2)(C)(iii) and 102(2)(E) of the Act).

(f) Affected environment.

(g) Environmental consequences (especially sections 102(2)(C)(i), (ii), (iv), and (v) of the Act).

(h) List of preparers.

(i) List of Agencies, Organizations, and persons to whom copies of the statement are sent.

(j) Index.

(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in Secs. 1502.11 through 1502.18, in any appropriate format.

Sec. 1502.11 Cover sheet.

The cover sheet shall not exceed one page. It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.
(e) A one paragraph abstract of the statement.
(f) The date by which comments must be received (computed in cooperation with EPA under Sec. 1506.10).
The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

Sec. 1502.12 Summary.
Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

Sec. 1502.13 Purpose and need.
The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

Sec. 1502.14 Alternatives including the proposed action.
This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (Sec. 1502.15) and the Environmental Consequences (Sec. 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:
(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.
(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.
(c) Include reasonable alternatives not within the jurisdiction of the lead agency.
(d) Include the alternative of no action.
(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.
(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

Sec. 1502.15 Affected environment.
The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

Sec. 1502.16 Environmental consequences.
This section forms the scientific and analytic basis for the comparisons under Sec. 1502.14. It shall consolidate the discussions of those elements required by sections 102(2)(C)(i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of section 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable
commitments of resources which would be involved in the proposal should it be implemented. This
section should not duplicate discussions in Sec. 1502.14. It shall include discussions of:
(a) Direct effects and their significance (Sec. 1508.8).
(b) Indirect effects and their significance (Sec. 1508.8).
(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local
(and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned.
(See Sec. 1506.2(d).)
(d) The environmental effects of alternatives including the proposed action. The comparisons under Sec.
1502.14 will be based on this discussion.
(e) Energy requirements and conservation potential of various alternatives and mitigation measures.
(f) Natural or depletable resource requirements and conservation potential of various alternatives and
mitigation measures.
(g) Urban quality, historic and cultural resources, and the design of the built environment, including the
reuse and conservation potential of various alternatives and mitigation measures.
(h) Means to mitigate adverse environmental impacts (if not fully covered under Sec. 1502.14(f)).
[43 FR 55994, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

Sec. 1502.17 List of preparers.
The environmental impact statement shall list the names, together with their qualifications (expertise,
experience, professional disciplines), of the persons who were primarily responsible for preparing the
environmental impact statement or significant background papers, including basic components of the
statement (Secs. 1502.6 and 1502.8). Where possible the persons who are responsible for a particular
analysis, including analyses in background papers, shall be identified. Normally the list will not exceed
two pages.

Sec. 1502.18 Appendix.
If an agency prepares an appendix to an environmental impact statement the appendix shall:
(a) Consist of material prepared in connection with an environmental impact statement (as distinct from
material which is not so prepared and which is incorporated by reference (Sec. 1502.21)).
(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.
(c) Normally be analytic and relevant to the decision to be made.
(d) Be circulated with the environmental impact statement or be readily available on request.

Sec. 1502.19 Circulation of the environmental impact statement.
Agencies shall circulate the entire draft and final environmental impact statements except for certain
appendices as provided in Sec. 1502.18(d) and unchanged statements as provided in Sec. 1503.4(c).
However, if the statement is unusually long, the agency may circulate the summary instead, except that
the entire statement shall be furnished to:
(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any
environmental impact involved and any appropriate Federal, State or local agency authorized to develop
and enforce environmental standards.
(b) The applicant, if any.
(c) Any person, organization, or agency requesting the entire environmental impact statement.
(d) In the case of a final environmental impact statement any person, organization, or agency which
submitted substantive comments on the draft.
If the agency circulates the summary and thereafter receives a timely request for the entire statement and
for additional time to comment, the time for that requestor only shall be extended by at least 15 days
beyond the minimum period.

Sec. 1502.20 Tiering.
Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (Sec. 1508.28). Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Section 1508.28).

Sec. 1502.21 Incorporation by reference.
Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

Sec. 1502.22 Incomplete or unavailable information.
When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.
(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.
(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement:
1. A statement that such information is incomplete or unavailable;
2. a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
3. a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and
4. the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.
(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the Federal Register on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.
[51 FR 15625, Apr. 25, 1986]

Sec. 1502.23 Cost-benefit analysis.
If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with section
102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

Sec. 1502.24 Methodology and scientific accuracy.
Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

Sec. 1502.25 Environmental review and consultation requirements.
(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

PART 1503—COMMENTING

1503.1 Inviting comments.
1503.2 Duty to comment.
1503.3 Specificity of comments.
1503.4 Response to comments.

Source: 43 FR 55997, Nov. 29, 1978, unless otherwise noted.

Sec. 1503.1 Inviting comments.
(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

1. Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.
2. Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;
(ii) Indian tribes, when the effects may be on a reservation; and
(iii) Any agency which has requested that it receive statements on actions of the kind proposed.
Office of Management and Budget Circular A-95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing State and local reviews of the draft environmental impact statements.

3. Request comments from the applicant, if any.
4. Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under Sec. 1506.10.

Sec. 1503.2 Duty to comment.
Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in Sec. 1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

Sec. 1503.3 Specificity of comments.
(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.
(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.
(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.
(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

Sec. 1503.4 Response to comments.
(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

1. Modify alternatives including the proposed action.
2. Develop and evaluate alternatives not previously given serious consideration by the agency.
3. Supplement, improve, or modify its analyses.
5. Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.
(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (Sec. 1502.19). The entire document with a new cover sheet shall be filed as the final statement (Sec. 1506.19).

PART 1504--PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

1504.1 Purpose.
1504.2 Criteria for referral.
1504.3 Procedure for referrals and response.


Source: 43 FR 55998, Nov. 29, 1978, unless otherwise noted.

Sec. 1504.1 Purpose.
(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.
(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").
(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

Sec. 1504.2 Criteria for referral.
Environmental referrals should be made to the Council only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:
(a) Possible violation of national environmental standards or policies.
(b) Severity.
(c) Geographical scope.
(d) Duration.
(e) Importance as precedents.
(f) Availability of environmentally preferable alternatives.

Sec. 1504.3 Procedure for referrals and response.
(a) A Federal agency making the referral to the Council shall:
1. Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.

2. Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not contain adequate information to permit an assessment of the matter's environmental acceptability.

3. Identify any essential information that is lacking and request that it be made available at the earliest possible time.

4. Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

5. A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) of this section.

6. A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

   (i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,
   (ii) Identify any existing environmental requirements or policies which would be violated by the matter,
   (iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,
   (iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,
   (v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and
   (vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

   1. Address fully the issues raised in the referral.
   2. Be supported by evidence.
   3. Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response. (f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

   1. Conclude that the process of referral and response has successfully resolved the problem.
2. Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

3. Hold public meetings or hearings to obtain additional views and information.

4. Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

5. Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.

6. Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

7. When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f)(2), (3), or (5) of this section.

(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).


PART 1505—NEPA AND AGENCY DECISIONMAKING

1505.1 Agency decisionmaking procedures.

1505.2 Record of decision in cases requiring environmental impact statements.

1505.3 Implementing the decision.


Source: 43 FR 55999, Nov. 29, 1978, unless otherwise noted.

Sec. 1505.1 Agency decisionmaking procedures. Agencies shall adopt procedures (Sec. 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and ensuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

Sec. 1505.2 Record of decision in cases requiring environmental impact statements.
At the time of its decision (Sec. 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6(c) and (d), and Part II, section 5(b)(4), shall:

(a) State what the decision was.
(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.
(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

Sec. 1505.3 Implementing the decision.
Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (Sec. 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.
(b) Condition funding of actions on mitigation.
(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.
(d) Upon request, make available to the public the results of relevant monitoring.

PART 1506--OTHER REQUIREMENTS OF NEPA

1506.1 Limitations on actions during NEPA process.
1506.2 Elimination of duplication with State and local procedures.
1506.3 Adoption.
1506.4 Combining documents.
1506.5 Agency responsibility.
1506.6 Public involvement.
1506.7 Further guidance.
1506.8 Proposals for legislation.
1506.9 Filing requirements.
1506.10 Timing of agency action.
1506.11 Emergencies.
1506.12 Effective date.

Source: 43 FR 56000, Nov. 29, 1978, unless otherwise noted.

Sec. 1506.1 Limitations on actions during NEPA process.
(a) Until an agency issues a record of decision as provided in Sec. 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

1. Have an adverse environmental impact; or
2. Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

3. Is justified independently of the program;
4. Is itself accompanied by an adequate environmental impact statement; and
5. Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (e.g. long leadtime equipment and purchase options) made by non-governmental entities seeking loan guarantees from the Administration.

Sec. 1506.2 Elimination of duplication with State and local procedures.
(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.
(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

1. Joint planning processes.
2. Joint environmental research and studies.
3. Joint public hearings (except where otherwise provided by statute).
4. Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.
Sec. 1506.3 Adoption.

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under Part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

Sec. 1506.4 Combining documents.

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

Sec. 1506.5 Agency responsibility.

(a) Information. If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (Sec. 1502.17). It is the intent of this paragraph that acceptable work not be redone, but that it be verified by the agency.

(b) Environmental assessments. If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) Environmental impact statements. Except as provided in Secs. 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under Sec. 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

Sec. 1506.6 Public involvement.

Agencies shall:

(a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.
1. In all cases the agency shall mail notice to those who have requested it on an individual action.

2. In the case of an action with effects of national concern notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor. An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

3. In the case of an action with effects primarily of local concern the notice may include:

   (i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).
   (ii) Notice to Indian tribes when effects may occur on reservations.
   (iii) Following the affected State's public notice procedures for comparable actions.
   (iv) Publication in local newspapers (in papers of general circulation rather than legal papers).
   (v) Notice through other local media.
   (vi) Notice to potentially interested community organizations including small business associations.
   (vii) Publication in newsletters that may be expected to reach potentially interested persons.
   (viii) Direct mailing to owners and occupants of nearby or affected property.
   (ix) Posting of notice on and off site in the area where the action is to be located.

4. Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

5. A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

   (d) Solicit appropriate information from the public.
   (e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.
   (f) Make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

Sec. 1506.7 Further guidance.
The Council may provide further guidance concerning NEPA and its procedures including:
(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.
(b) Publication of the Council's Memoranda to Heads of Agencies.
(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

1. Research activities;
2. Meetings and conferences related to NEPA; and
3. Successful and innovative procedures used by agencies to implement NEPA.

Sec. 1506.8 Proposals for legislation.
(a) The NEPA process for proposals for legislation (Sec. 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.
(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

1. There need not be a scoping process.
2. The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute; Provided, That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by Secs. 1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.
(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) and the Wilderness Act (16 U.S.C. 1131 et seq.)).
(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration, a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.
(iv) The agency decides to prepare draft and final statements.
(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

Sec. 1506.9 Filing requirements.
Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, DC 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and Sec. 1506.10.

Sec. 1506.10 Timing of agency action.
(a) The Environmental Protection Agency shall publish a notice in the Federal Register each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section shall be calculated from the date of publication of this notice.
(b) No decision on the proposed action shall be made or recorded under Sec. 1505.2 by a Federal agency until the later of the following dates:
1. Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

2. Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement. An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published.

This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public’s right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see Sec. 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.


Sec. 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

Sec. 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under section 102(2)(D) of the Act or under section 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council’s guidelines published in the Federal Register of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.
(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

**PART 1507--AGENCY COMPLIANCE**

1507.1 Compliance.
1507.2 Agency capability to comply.
1507.3 Agency procedures.


Source: 43 FR 56002, Nov. 29, 1978, unless otherwise noted.

Sec. 1507.1 Compliance.
All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by Sec. 1507.3 to the requirements of other applicable laws.

Sec. 1507.2 Agency capability to comply.
Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:
(a) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.
(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.
(c) Prepare adequate environmental impact statements pursuant to section 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.
(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of section 102(2)(E) extends to all such proposals, not just the more limited scope of section 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.
(e) Comply with the requirements of section 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.
(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

Sec. 1507.3 Agency procedures.
(a) Not later than eight months after publication of these regulations as finally adopted in the Federal Register, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the Federal Register for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review
and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

1. Those procedures required by Secs. 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.
2. Specific criteria for and identification of those typical classes of action:

   (i) Which normally do require environmental impact statements.
   (ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (Sec. 1508.4)).
   (iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies’ own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in Sec. 1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by Sec. 1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

PART 1508--TERMINOLOGY AND INDEX

1508.1 Terminology.
1508.2 Act.
1508.3 Affecting.
1508.4 Categorical exclusion.
1508.5 Cooperating agency.
1508.6 Council.
1508.7 Cumulative impact.
1508.8 Effects.
1508.9 Environmental assessment.
1508.10 Environmental document.
1508.11 Environmental impact statement.
1508.12 Federal agency.
1508.13 Finding of no significant impact.
1508.14 Human environment.
1508.15 Jurisdiction by law.
Sec. 1508.1 Terminology.
The terminology of this part shall be uniform throughout the Federal Government.

Sec. 1508.2 Act.
"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as "NEPA."

Sec. 1508.3 Affecting.
"Affecting" means will or may have an effect on.

Sec. 1508.4 Categorical exclusion.
"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in Sec. 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

Sec. 1508.5 Cooperating agency.
"Cooperating agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in Sec. 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

Sec. 1508.6 Council.
"Council" means the Council on Environmental Quality established by Title II of the Act.

Sec. 1508.7 Cumulative impact.
"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

Sec. 1508.8 Effects.
"Effects" include:
(a) Direct effects, which are caused by the action and occur at the same time and place.
(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.
Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

Sec. 1508.9 Environmental assessment.
"Environmental assessment":
(a) Means a concise public document for which a Federal agency is responsible that serves to:

1. Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.
2. Aid an agency's compliance with the Act when no environmental impact statement is necessary.
3. Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

Sec. 1508.10 Environmental document.
"Environmental document" includes the documents specified in Sec. 1508.9 (environmental assessment), Sec. 1508.11 (environmental impact statement), Sec. 1508.13 (finding of no significant impact), and Sec. 1508.22 (notice of intent).

Sec. 1508.11 Environmental impact statement.
"Environmental impact statement" means a detailed written statement as required by section 102(2)(C) of the Act.

Sec. 1508.12 Federal agency.
"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

Sec. 1508.13 Finding of no significant impact.
"Finding of no significant impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (Sec. 1508.4), will not have a significant effect on the human
environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (Sec. 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

**Sec. 1508.14 Human environment.**
"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (Sec. 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

**Sec. 1508.15 Jurisdiction by law.**
"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

**Sec. 1508.16 Lead agency.**
"Lead agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

**Sec. 1508.17 Legislation.**
"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

**Sec. 1508.18 Major Federal action.**
"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (Sec. 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (Secs. 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

1. Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.
2. Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.
3. Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

4. Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

Sec. 1508.19 Matter.
"Matter" includes for purposes of Part 1504: (a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in section 309(a) of the Clean Air Act (42 U.S.C. 7609). (b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

Sec. 1508.20 Mitigation.
"Mitigation" includes:
(a) Avoiding the impact altogether by not taking a certain action or parts of an action.
(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
(e) Compensating for the impact by replacing or providing substitute resources or environments.

Sec. 1508.21 NEPA process.
"NEPA process" means all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.

Sec. 1508.22 Notice of intent.
"Notice of intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:
(a) Describe the proposed action and possible alternatives.
(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.
(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

Sec. 1508.23 Proposal.
"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (Sec. 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

Sec. 1508.24 Referring agency.
"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

Sec. 1508.25 Scope.
Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other
To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

1. Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

   (i) Automatically trigger other actions which may require environmental impact statements.
   (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
   (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

2. Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

3. Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include:

4. No action alternative.
5. Other reasonable courses of actions.
6. Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct; (2) indirect; (3) cumulative.

Sec. 1508.26 Special expertise.
"Special expertise" means statutory responsibility, agency mission, or related program experience.

Sec. 1508.27 Significantly.
"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

1. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
2. The degree to which the proposed action affects public health or safety.
3. Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.
5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

6. The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

7. Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

8. The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

9. The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

10. Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

[43 FR 56003, Nov. 29, 1978; 44 FR 874, Jan. 3, 1979]

Sec. 1508.28 Tiering.
"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

Appendices
NEPA Implementation Procedures; Appendices I, II, and III

Note: Particular contacts may in some instances be outdated.
The National Environmental Policy Act (NEPA) can be a powerful tool for managing the impacts of the modern world on "cultural resources" such as historic buildings, historic districts, archeological sites, Native American traditional places, and traditional ways of life.

This page and its links are designed to help people concerned about cultural resources understand how the review of Federal projects under NEPA works. It also may help people doing NEPA review understand how cultural resources, and the laws that deal with such resources, can be addressed in environmental impact analyses under NEPA.

These pages are designed for use mostly by two kinds of people:

- People who are officially or unofficially concerned about impacts on cultural resources, and who are consulted during, or who review, NEPA analyses and the documents that describe them. If you're such a person, you may find help in the "Reviewer Tips" sprinkled through the pages that follow.

- People who work on environmental impact analyses under NEPA, and who want to figure out how to address impacts on cultural resources. If that's who you are, you may benefit by checking the "Analyst Tips" that are also found throughout these pages.

This page and its links were developed under a grant from the National Park Service and the National Center for Preservation Technology and Training. Its contents are solely the responsibility of the National Preservation Institute and do not necessarily represent the official position or policies of the NPS or the National Center for Preservation Technology and Training.
What is NEPA?

The National Environmental Policy Act (NEPA) was enacted in 1969, one of many legislative and executive responses to growing concern about the condition of the environment, and about what human actions were doing to it. NEPA does two major things.

First, it establishes national policy regarding the environment. It's important to understand this policy as a basis for correctly interpreting NEPA's action-forcing provisions.

Second, NEPA requires that agencies prepare a "detailed statement" of the environmental impacts of any "major federal action significantly affecting the quality of the human environment" (MFASAQHE). This "detailed statement" is known as an Environmental Impact Statement (EIS).

This procedural requirement, and those that logically need to be followed in order to figure out whether an EIS is needed, are complied with by following regulations issued by the Council on Environmental Quality (CEQ). These regulations are found at 40 CFR 1500-1508 -- that is, Title 40, Parts 1500-1508 of the Code of Federal Regulations.

This site provides guidance about the NEPA review process, how cultural resources should be addressed in carrying out the process, and how people concerned with cultural resources can use the process.

Where Did NEPA Come From?

The origins of NEPA are similar to those of the National Historic Preservation Act (NHPA), which was enacted three years before NEPA. During the 1930s, rapid industrialization created environmental problems, which were exacerbated by World War II. After the War, programs like urban renewal, the interstate highway program, and the charge given the Corps of Engineers to dam rivers for a variety of purposes accelerated damage, as did the increasing use of toxic pesticides and fertilizers. Rachel Carson's pivotal book, *Silent Spring*, helped mobilize people to push for protection of the environment in a variety of ways, notably from the thoughtless acts of Federal agencies. One major result was NEPA, enacted in 1969 though it did not take effect until 1970.

NEPA has been amended several times since its enactment, and a number of other laws have established interlocking or overlapping requirements that must be addressed in NEPA analyses.

What is the "Human Environment?"

"Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment (40 CFR 1508.14)

NEPA's concern is with the "human environment," defined as including the natural and physical (e.g. built) environment and the relationships of people to that environment. A thorough environmental analysis under NEPA should systematically address the "human" -- social and
cultural -- aspects of the environment as well as those that are more "natural," and should address the relationships between natural and cultural.

Culturally valued aspects of the environment generally include historic properties, other culturally valued pieces of real property, cultural use of the biophysical environment, and such "intangible" sociocultural attributes as social cohesion, social institutions, lifeways, religious practices, and other cultural institutions. These impacts are usually analyzed either as impacts on "cultural resources," or as "social impacts," or as both -- but many such impacts actually fall into the cracks between the "cultural resource" and "social impact" categories as usually defined.

What are "Cultural Resources"?

The term "cultural resource" is not defined in NEPA or any other Federal law. However, there are several laws and executive orders that deal with particular kinds of "resources" that are "cultural" in character.

- NEPA itself, and the CEQ regulations, require that agencies consider the effects of their actions on all aspects of the "human environment." Humans relate to their environment through their culture, so the cultural aspects of the environment -- for example, cultural uses of the natural environment, the built environment, and human social institutions -- obviously must be considered in NEPA analyses.
- The National Historic Preservation Act (NHPA) sets forth Government policy and procedures regarding "historic properties" -- that is, districts, sites, buildings, structures and objects included in or eligible for the National Register of Historic Places. Section 106 of NHPA requires that Federal agencies consider the effects of their actions on such properties, following regulations issued by the Advisory Council on Historic Preservation (36 CFR 800).
- The Native American Graves Protection and Repatriation Act (NAGPRA) requires Federal agencies and federally assisted museums to return "Native American cultural items" to the Federally recognized Indian tribes or Native Hawaiian groups with which they are associated. Regulations, by the National Park Service (NPS) are at 43 CFR 10.
- The American Indian Religious Freedom Act (AIRFA) says that the U.S. Government will respect and protect the rights of Indian tribes to the free exercise of their traditional religions; the courts have interpreted this as requiring agencies to consider the effects of their actions on traditional religious practices.
- The Archeological Resources Protection Act (ARPA) prohibits the excavation of archeological resources (anything of archeological interest) on Federal or Indian lands, without a permit from the land manager.
- The Archeological Data Preservation Act (ADPA) or Archeological and Historic Preservation Act (AHPA) requires that agencies to report any perceived impacts that their projects and programs may have on archeological, historical, and scientific data, and to recover such data or assist the Secretary of the Interior in recovering them.
The Federal Records Act (FRA) requires that agencies manage documents in such a way as to protect their historical value.

- The Abandoned Shipwrecks Act (ASA) asserts U.S. title to abandoned shipwrecks, and transfers title to the States.
- Executive Order 12898 requires that agencies try to avoid disproportionate and adverse environmental impacts on low income and minority populations; impacts may be cultural -- for example, impacts on a culturally important religious, subsistence, or social practice.
- Executive Order 13006 requires that agencies give priority to using historic buildings in historic districts in central business areas to meet their mission requirements.
- Executive Order 13007 requires that agencies try not to damage "Indian sacred sites" on Federal land, and avoid blocking access to such sites by traditional religious practitioners.

A good NEPA analysis should consider impacts on all these kinds of resources, and address the requirements of all these laws.

U.S. Government Policy Under NEPA

NEPA is the "National Environmental Policy Act," so one of the important things it does is establish national policy. The core policy established by NEPA is to:
Use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans NEPA Sec. 101(a).

Things to do under NEPA other than environmental review:

- Consider here some examples of things other than environmental review that an agency might do under the authority of NEPA. Consider environmental protection and enhancement in general policymaking
- Budget for environmental projects and personnel
- Include how environmental factors are handled when evaluating the performance of personnel
- Provide environmental information to the public

NEPA isn't nearly as directive about such "other things" as it is about environmental review, but the policy is there, and agencies should consider it in all their activities.

This policy provides a general philosophical direction for NEPA review, and of course justifies a wide range of activities other than project review.

- Note: NEPA's policy language is similar to that of the National Historic Preservation Act (NHPA). This results from the fact that when NHPA was amended in 1980, its language regarding purposes and policy was adapted from NEPA.
NEPA's policy includes language that pertains specifically to the cultural aspects of the environment (cultural resources). It says the government will ...
...use all practicable means ... to the end that the Nation may ...
(2) assure for all Americans ... esthetically and culturally pleasing surroundings;
(4) preserve important historic, cultural, and natural aspects of our national heritage ...
NEPA Sec. 101(b)

An important aspect of NEPA's policy is that it promotes systematic, interdisciplinary analysis of environmental issues, including the use of disciplines that are concerned with cultural resources. (A)II agencies of the Federal Government shall -
(A) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment. NEPA Sec. 102 emphasis added.

**Interdisciplinary analysis**
"Interdisciplinary" studies and analyses are often confused with those that are merely "multidisciplinary." In a multidisciplinary study, a lot of specialists do their own things and someone brings the results together. In an interdisciplinary study, the specialists work together as a team, bringing the expertise of each to bear on everyone's problems and issues. The result should be a dynamic, creative analysis that is more than the sum of its parts.

**Social Sciences and Environmental Design Arts**
Some examples of social sciences that are often pertinent to environmental review are cultural and social anthropology, urban and rural sociology, social psychology, economics, cultural geography, archaeology, history, architectural history, and folklife studies. Some examples of environmental design arts are landscape architecture, urban planning, regional planning, architecture, and historical architecture.

**NEPA Terminology**
Like most laws, NEPA has generated a specialized terminology, consisting mostly of acronyms.

- NEPA review is the process of project and program review under NEPA.
- NEPA analysis is the analytic process involved in NEPA review.
- A NEPA document is the report that documents the analysis and its results.
- CEQ is the Council on Environmental Quality, which oversees NEPA review.
- CEQ regulations are the NEPA regulations at 40 CFR 1500-1508. CEQ has also published the answers to frequently asked questions about NEPA and its regulations, in an oft-cited document usually referred to as 40 Questions, and publishes other guidance material, too. CEQ guidance can be found on the Internet at http://ceq.eh.doe.gov/nepa/nepanet.htm.
- EPA is the Environmental Protection Agency, which has a special role in the review of
NEPA documents.

- **CATEX** (or CX, CE, Exclusion, various other terms) means "categorical exclusion," a project type that an agency excludes from detailed NEPA review because it has little potential for impact.

- **EA** means environmental assessment, an assessment done on a project that is neither an obvious CATEX nor an obvious MFASAQHE, to determine whether its impacts may be significant enough to require an environmental impact statement.

- Environmental Justice means seeking to avoid disproportionate adverse environmental impacts on low income populations and minority communities, in accordance with Executive Order 12898. Such impacts may be cultural in character.

- **FONSI or FNSI or FoNSI** means a Finding of No Significant Impact, done where the EA results in the conclusion that the project's impacts will not be significant, and hence no environmental impact statement is required.

- **EIS** means an environmental impact statement. The preparation of an EIS includes:
  - Publication of a notice of intent (NOI) to prepare an EIS.
  - Scoping -- preliminary analysis and consultation to determine the scope of the EIS.
  - Analysis leading to a draft environmental impact statement, or DEIS.
  - Public review and comment, response to comments, occasionally leading to abandonment of or rethinking the project, more often to further analysis and an amended, revised, or supplementary DEIS, or to ...
  - Publication of a final environmental impact statement, or FEIS.
  - Publication of a record of decision, or ROD, which informs the public of the decision, the agency's rationale for it, and any mitigation measures the agency will carry out.

- **SEIS** means a supplemental or supplementary EIS, prepared if the project changes, or new impacts are discovered after the original EIS is done, or the agency is ordered to do so by a court.

- **PEIS** means a Programmatic EIS, done on an agency program rather than a project; they're rare.

- **LEIS** means Legislative EIS, done on a piece of proposed legislation.

Two common NEPA terms need special attention: these are mitigation and significance.
"Mitigation"

According to the CEQ regulations (40 CFR 1508.20), mitigation means:

- Avoiding impact altogether
- Minimizing impact
- Limiting the degree or magnitude of action
- Rectifying impact
- Repairing, rehabilitating, restoring
- Reducing or eliminating impact over time
- Preservation and maintenance activities
- Compensating for the impact
- Replacing or providing substitutes

In terms of cultural resources, this definition can clearly embrace things like:

- Relocating a project to avoid impact on an archeological site, a historic district, or an area of traditional use.
- Reducing the scale or altering the design of a project to reduce visual impacts
- Restoring impacted sites, landscapes, or buildings
- Implementation of preservation plans and maintenance programs that reduce impacts over time.
- Compensating for impacts, for example by rehabilitating some buildings in exchange for demolishing others, or conducting archeological data recovery.
- Replacing lost plant gathering areas by providing traditional plant gatherers with access to other similar areas.

"Significance" under NEPA

Significance, Context, and Intensity are important NEPA terms.

Doing an Environmental Assessment (EA) involves determining the significance, or importance of likely environmental impacts. The regulations direct that this be done by considering two variables: "Context" and "Intensity."

- "Context" is the geographic, biophysical, and social context in which the effects will occur. The regulations mention society as a whole, the region, and affected interests as examples of context. Considering contexts does NOT mean giving greater attention to, say, effects on society as a whole than to effects on a local area. On the contrary, the importance of a small-scale impact must be considered in the context of the local area, not dismissed because it does not have impacts on larger areas.

- "Intensity" refers to the severity of the impact, in whatever context(s) it occurs. The regulations require that a number of variables be addressed in measuring intensity. Impacts that may be both beneficial and adverse;
• Effects on public health and safety

• "Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas;"

• The potential for controversy on environmental grounds;

• Uncertainty about effects, or unique risks;

• The potential for establishing a precedent, or representing a decision in principle that defines the parameters of a further action;

• Cumulative impacts;

• Potential adverse effects on "districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places," and the potential for "loss or destruction of significant scientific, cultural, or historical resources;"

• Potential adverse effects on an endangered or threatened species or its habitat, or on a critical habitat; and

• Potential for violation of a Federal, state, or local law or requirement "imposed for the protection of the environment." (40 CFR 1508.27)

NEPA requires that a broad range of effects be considered:

• Direct effects such as actually changing an ecosystem, filling a wetland, knocking down a building, digging up an archeological site.

• Indirect effects such as causing economic change in a community that changes the environment over the long run (through development, increased taxes, etc.), or causing long-term erosion in a watershed.

• Cumulative effects -- the "straws that break the camel's back." An individual action may not have much effect, but it may be part of a pattern of actions whose effects ARE significant. For example, widening a bridge may not itself have much effect, but it may be the last piece of highway improvement that allows rampant development of a pristine valley.

The NEPA Review Process

As the National Environmental Policy (not Protection) Act, NEPA is not designed to protect all aspects of the environment, but to make sure that the decisions made by Federal agencies are environmentally sound. It is not supposed simply to generate environmental documents.
Contrary to what some historic preservation and cultural resource management specialists tend to think, NEPA does not apply only to a narrow range of Federal projects; its scope is really quite broad.

NEPA encourages early consideration of environmental impacts, in an open manner, with meaningful public participation. Of course, what one group thinks is meaningful may not seem so to another group.

The MFASAQHE Myth

A common belief among historic preservationists is that "NEPA applies just to major actions, while Section 106 applies to everything." Based on this perception, preservationists often don't bother to consider NEPA as a tool to use in examining impacts on historic properties.

This perception arises from the following language in NEPA:

(A)ll agencies of the Federal Government shall ...

(C) include in (all) proposals for ... major Federal actions significantly affecting the quality of the human environment, a detailed statement...

NEPA Sec. 102, emphasis added

But this language doesn't say that NEPA applies only to MFASAQHEs (major federal actions significantly affecting the quality of the human environment). It says that a "detailed statement" of environmental impacts will be prepared for each MFASAQHE. This "detailed statement" is what the NEPA regulations call an Environmental Impact Statement (EIS). In other words, deciding that something is a MFASAQHE is the threshold for preparing an EIS, not for the application of NEPA.

In fact, NEPA applies to all actions carried out, assisted, or licensed by the Federal government. There are levels of NEPA analysis below the level of an EIS, that provide opportunities for -- and indeed require -- consideration not only of historic properties but of all kinds of cultural resources. These levels are represented by the Environmental Assessment (EA) and the Categorical Exclusion.

NEPA requires review of the effects of all Federal, federally assisted, and federally licensed actions, not just of those defined as "major" or as having "significant" impacts. The level of review given different kinds of projects varies with the likelihood of serious impact, however.

The courts have consistently found that while NEPA does not elevate environmental protection over all other aspects of public policy, it does require a "hard look" at environmental impacts and at alternatives. NEPA does not require a particular result; it does not require that the best alternative from an environmental perspective be selected. It does mandate a process for taking that "hard look" at what an action may do to the environment, and what can be done about it.
In general, and as expressed in different ways for different kinds of actions, the NEPA process entails:

- determining what need must be addressed,
- identifying alternative ways of meeting the need,
- analyzing the environmental impacts of each alternative, and
- armed with the results of this analysis, deciding which alternative to pursue and how.

The NEPA regulations, at 40 CFR 1500-1508, are issued by the Council on Environmental Quality (CEQ), in the Executive Office of the President. They are binding on all Executive Branch and independent Federal agencies. They outline the NEPA review process. The statutory basis for the process is in Section 102 of the Act:

(A)ll agencies of the Federal Government shall ...

- (C) include in (all) proposals for ... major Federal actions significantly affecting the quality of the human environment, a detailed statement ... NEPA Sec. 102

Under the regulations, the "detailed statement" called for by NEPA is called an Environmental Impact Statement (EIS). It must be prepared on all "major Federal actions significantly affecting the quality of the human environment."

Under the NEPA regulations, agencies may "exclude" certain classes of action from detailed review. These are referred to as "Categorical Exclusions" (CX, CE, CatEx) Even categorically excluded projects should receive some review, however, because the regulations require finding out whether "extraordinary circumstances" may require such a project to be analyzed in more detail.

If a project isn't categorically excluded, but also isn't obviously a major Federal action significantly affecting the quality of the human environment, it must be subjected to an "Environmental Assessment" (EA). This assessment leads either to the decision to prepare an EIS, or to issuance of a "Finding of No Significant Impact" (FONSI, FoNSI, or FNSI).

**NEPA Regulations**

NEPA, the National Environmental Policy (not "Protection") Act, articulates general Federal policy favoring protection of the environment, but its major action-forcing mechanism is a requirement that agencies consider the effects of their actions on the "human environment."

Regulations implementing NEPA have been issued by the Council on Environmental Quality (CEQ), in the Executive Office of the President. CEQ is a three-member council of Presidential appointees, served by a small staff. The regulations are at 40 CFR 1500-1508 -- that is, Title 40 of the Code of Federal Regulations, Parts 1500 through 1508. The regulations apply to all
Federal agencies, and all agency actions. The basic requirement is to analyze the effects of the action, and consider these effects in decisionmaking.

A common "myth" about NEPA is that it applies only to "major federal actions significantly affecting the quality of the human environment" (MFASAQHE). In fact, NEPA applies to ALL agency actions, but types of action with different levels of potential environmental impact get different levels of consideration. MFASAQHEs must be given the highest level of consideration, through preparation of an Environmental Impact Statement (EIS).

For the full text of the NEPA regulations, and links to other pertinent agency regulations and CEQ guidance, see the CEQ Internet site NEPANet.

Suggestions for Instructional Use
The NPI NEPA pages can serve not only as reference tools but also as training devices -- for individually paced self-training, web-based cohort training, or classroom instruction.
Instructional uses are limited only by the imagination of instructors, students, and curriculum designers, but here are two example training exercises using the NEPA pages.

Reviewing an Environmental Assessment
Applying a Categorical Exclusion Checklist

Environmental Assessment

An EA is done to determine whether an action is a "major federal action significantly affecting the quality of the human environment." The CEQ regulations don't say much about the content of an EA, but they do contain a substantial definition of what it means to have a "significant" impact, and this can be used to structure the EA analysis.

The EA is supposed to be "brief but thorough." It's not supposed to be "encyclopedic," nor is it supposed to be a "mini-EIS" (though many are). It can be, and often is, the context in which other authorities, such as Section 106, are addressed.

The EA leads either to the decision to do an EIS, or to a Finding of No Significant Impact (FONSI). The FONSI is published for public review and comment. Some courts have found that it is OK for a FONSI to include an agency's commitment to mitigation measures that will, if implemented, bring the impacts of the project down below a significant level. Such FONSIs are referred to as "mitigated FONSIs."

About 50,000 EAs are done each year.

What should go into an EA?

The regulations are very unspecific about the required content of an EA, but they do say that the EA must explain the need for the proposed project, the alternatives considered, and the
environmental impacts of each alternative. It must also identify agencies and persons consulted in preparing the EA.

In their definitions section, at Section 1508.27, the CEQ regulations define the word "significantly" as used when the Act refers to "major Federal action significantly affecting the quality of the human environment." Since it is such actions that require preparation of an EIS, the definition of "significantly" indicates how the significance of impacts should be measured in an EA. If the effects aren't significant when measured against the definition, then a Finding of No Significant Impact can be issued and the project proceeds with no further NEPA review, but if the definition is met, then an EIS is needed.

The definition is framed in terms of "context" and "intensity."

Context means the geographic, social, and environmental contexts within which the project may have effects. The regulations refer to:

- Society as a whole, defined as including all human society and the society of the nation
- The affected region
- Affected interests, such as those of a community, Indian tribe, or other group
- The immediate locality

The regulations also say that both short-term and long-term impacts must be considered -- in other words that impacts must also be considered in the context of time.

It is important not to think of the various contexts as a hierarchy. An impact on society as a whole is not necessarily more important than an impact on a particular interest or locality.

"Intensity" is the severity of the potential impact, considered in context. The regulations direct agencies to consider:

- Both beneficial and adverse impacts
- Impacts on human health and safety
- Impacts on an area's unique characteristics, such as historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, and ecologically critical areas.

Note that impacts on "historic or cultural resources" are explicitly identified as attributes that must be addressed in order to measure the significance of a project's potential environmental effect. Hence such impacts must be considered in an EA.

Note also that it's "historic or cultural resources." The two terms are not synonymous.

The regulations go on to identify the potential for controversy, the presence of uncertainty or
unknown risks, cumulative effects, adverse effects on historic properties, scientific, cultural or historical resources, endangered and threatened species, and potential violations of law or other requirement designed to protect the environment as factors to consider in measuring the intensity of potential impacts.

Controversy is generally understood to mean controversy about the environmental effects of a project -- not mere unpopularity.

Cumulative effects refer to the role of a project's effects in contributing to a pattern of effects of multiple projects, programs, or trends.

Ideally, the definition of "significantly" at 40 CFR 1508.27 should provide an outline for an EA. Going through the outline -- asking oneself "are we likely to affect this measure of intensity?" with respect to each measure, in each context -- should bring the analyst to a logical conclusion about whether there will be a significant effect. Unfortunately, many agencies don't use the definition this way.

How are EAs reviewed?

The regulations are unspecific about internal and external review of an EA, so the amount and kind of review that takes place varies widely. Practically speaking, some kind of review is obviously necessary in many cases, because whoever is preparing the EA obviously can't know what all the possible impacts are; she will have to ask people. This does not necessarily mean a formal review and comment process. Review may occur in the context of EA preparation, as part of consultation with knowledgeable or concerned parties, and with reference to other environmental laws like Section 106.

EAs and cultural resources

As noted, the definition at 40 CFR1508.27 mentions historic and cultural resources twice, in different ways. Clearly, impacts on both historic properties and other kinds of cultural resources are supposed to be considered in an EA. The EA is also an excellent, and commonly used, context for coordination with Section 106 of NHPA.

40 CFR 1508.14

40 CFR 1508.14 -- the regulatory definition of the "human environment" -- is an often misinterpreted section of the CEQ regulations. After defining the human environment to include the natural and physical environment and human relationships with that environment, it says that economic and social effects by themselves do not require preparation of an EIS. It goes on to say that when an EIS is prepared and economic or social effects are interrelated with effects on the natural or physical environments, then such effects must be considered.

Agencies have occasionally interpreted this to mean that they do not need to consider economic and social effects in an EA. This is a pretty exotic reading of the regulatory language. Section 1508.14 does NOT say that economic or social effects do not need to be considered in EAs. The
point of 40 CFR 1508.14 is just that if there are no other potential impacts, economic and social impacts are not by themselves sufficient to constitute a "significant effect on the human environment" requiring preparation of an EIS.

Nor, of course, does 40 CFR 1508.14 mean that potential impacts on human culture and its resources are not sufficient by themselves to require preparation of an EIS, since it doesn’t even mention such impacts.

The outcome of an EA

The EA results either in the conclusion that an EIS is necessary, or in a written "Finding of No Significant Impact" or FONSI. The FONSI, in theory, demonstrates that the impacts of the project don't rise to the level of significance, with reference to the significance measures listed at 40 CFR 1508.27. The FONSI:

- Includes either the whole EA or a summary (usually the latter)
- References any other pertinent environmental documents (e.g., an MOA)
- Says why it's concluded that there's no significant impact
- If some factors are weighted more heavily than others, says so
- In most jurisdictions, may include or refer to mitigation measures that the agency plans to implement in order to keep impacts below the level of significance (Such a FONSI is called a "mitigated FONSI")
- Must be available to the public, but may or may not be put out for formal public review.

Common problems with EAs

Since the CEQ regulations are vague about what should be in an EA, many if not most agencies and consultants simply adapt the much more detailed procedures for doing Environmental Impact Statements (EISs). This tends to result in long, complicated, costly documents that are, in essence, EIS with little or no public participation, and that aren't particularly clear about why the agency thinks that impacts won't be significant.

EAs and EISs serve fundamentally different purposes. An EA is to determine whether a specific threshold is crossed -- the threshold of "significant" impact. An EIS simply has to reveal the impacts, not demonstrate that a threshold is or is not crossed. So when one turns an EA into a "mini-EIS", one produces a document that often doesn't clearly show that there will or will not be a significant impact. Instead one merely discusses all the impacts (at best), and then asserts a conclusion whose relationship to the analysis is not always very clear.

In addition, of course, a "mini-EIS" may not be very "mini." It may be as long and complicated
as a regular EIS; it's just usually prepared with little or no public participation.

Another problem is lack of "scoping" -- that is, figuring out the scope of the analysis. Because the regulations talk of scoping only in the context of EISs, formal scoping is not always done with respect to an EA; instead the analysis done more or less by rote.

With respect to historic properties, a very common problem is "deferral," in which the agency acknowledges that it doesn't know much about what effects there may be on historic properties, but whatever they are, Section 106 review, to be performed later, will take care of them, and therefore there's no significant impact.

And with respect to other kinds of cultural resources, a common problem is that they aren't considered at all. Historic properties (or even more narrowly, archeological sites) are sometimes the only things discussed in the "cultural resource" part of an EA, and if social impacts are considered, they are often considered only terms of easily quantifiable socioeconomic variables like population, employment, and use of public services. The result is that impacts on many classes of cultural resource simply are not identified, or considered in deciding whether significant impacts may occur.

**Reviewing An Environmental Assessment For Its Treatment of Cultural Resources**

**Textbook: Any Environmental Assessment (EA)**

**Preparation:** If you (the student) are personally or professionally interested in a particular EA, you can use that document. If not, your instructor may assign you an EA to review or you may select one yourself from any available to you. If you are not reviewing the EA based on your own interests, you should assume any one of the following roles:

1. Individual concerned with historic buildings, structures, districts.
2. Representative of indigenous group concerned with impacts on culture, lifeways, spiritual places.
3. Archeologist.
4. Individual concerned with cultural landscapes.
5. Community representative concerned with impacts on community ambience, lifestyle.

Needless to say, the role selected should relate somehow to the environment potentially affected by the action analyzed in the EA. For example, if you want to play the role of someone concerned with historic buildings, you shouldn't select an EA to review that concerns a timber sale where there aren't any buildings.

**Assignment:** Review and critique the EA both for its general treatment of cultural resources and for how it addresses (or fails to address) your own particular real or assumed/assigned interests. Use the NEPA pages in doing review and preparing the critique.

**Suggestion:** Be sure to consider the following:

1. Is the EA organized into approximately the following elements? If so, what are the pros and
cons of this sort of organization?
* Cover sheet.
* Summary.
* Table of contents.
* Purpose of and need for action.
* Alternatives including proposed action.
* Affected environment.
* Environmental consequences.
* List of preparers.
* List of Agencies, Organizations, and persons to whom copies of the EA were sent.
* Index.
* Appendices (if any).

2. Does the EA present alternative ways of achieving the purpose of the project? If not, is there a good reason it doesn’t?

3. Does the EA describe the contexts in which impacts may occur? If so, what are they?

4. Does the EA discuss the intensity of likely impacts, as outlined in 40 CFR 1508.27?

5. Does the EA describe historic properties subject to possible impact?

6. Does the EA describe cultural resources other than historic properties? If so, what are they?

7. Does the EA discuss what effects are likely on cultural resources?

8. Does the EA propose ways of avoiding, reducing, or mitigating adverse effects on cultural resources? What are they? Do you think they are adequate?

9. Is it likely that cultural resource legal authorities in addition to NEPA are relevant to the project and its effects? If so, how does the EA address them?

10. Is the EA responsive to culture-related environmental justice concerns?

11. Does the EA reflect consultation with stakeholders having cultural resource concerns? Has the consultation been adequate?

12. Does the EA lead to a clear and understandable conclusion as to whether the project is likely to have significant impacts on the quality of the human environment? Do you agree with the conclusion from a cultural standpoint? Why or why not?

Draft a letter to the agency responsible for the EA, providing comments and telling the agency what you think of the EA and what you think the agency should do. If you have an instructor, turn the letter in to the instructor for review and critique. In self-instruction, critique the letter yourself, referring to the cheat sheet
Self-Instruction Cheat Sheet:
Reviewing an Environmental Assessment

Question 1: Is the EA organized into approximately the following elements? If so, what are the pros and cons of this sort of organization?

* Cover sheet.
* Summary.
* Table of contents.
* Purpose of and need for action.
* Alternatives including proposed action.
* Affected environment.
* Environmental consequences.
* List of preparers.
* List of Agencies, Organizations, and persons to whom copies of the EA were sent.
* Index.
* Appendices (if any).

Discussion: The elements listed are those given in the NEPA regulations as the appropriate subdivisions of an EIS, and many agencies use them to structure EAs as well. Using them has the advantage of providing consistency among agency environmental documents, and perhaps facilitating the work of contractors. However, the purpose of an EIS is fundamentally different from that of an EA, and this kind of organization may not be the most efficient and clear way to achieve the purpose of the latter.

An EIS reveals environmental impacts and alternatives to the decisionmaker and to the public, and indicates which alternatives are environmentally preferable. The decisionmaker is then free to select an alternative based not only on environmental considerations but on all other factors as well -- cost, mission requirements, and so on. An EA, on the other hand, is supposed to provide the basis for answering a single question: does the action have the potential for a significant impact on the quality of the human environment?

So, in the example you've analyzed, does the selected format help or hinder the analyst in reaching a clear and defensible conclusion about the potential for significant impact?

Question 2: Does the EA present alternative ways of achieving the purpose of the project? If not, is there a good reason it doesn't?

Discussion: Although the requirement to discuss alternatives isn't as explicit in the regulatory language dealing with EAs as it is with regard to EISs, alternatives should be discussed unless there's a good reason not to, and if there is such a reason, the agency ought to be able to explain what it is. In any event, if there's an alternative that you think is preferable, there's nothing wrong with challenging the agency about why they didn't look at it.

Does the EA describe the contexts in which impacts may occur? If so, what are they?
Discussion: Check 40 CFR 1508.27 for the kinds of contexts that should be addressed. What contexts are relevant to you? Did the agency ignore an important context -- e.g., the context of the affected region, or affected interests?

Does the EA discuss the intensity of likely impacts, as outlined in 40 CFR 1508.27?

Discussion: Look at each of the items included in the outline of intensity measures; consider which ones are relevant to your concerns. Were these measures systematically looked at in the EA? If not, this is something to challenge.

Does the EA describe historic properties subject to possible impact?

Discussion: Since historic properties are explicitly identified in 40 CFR 1508.27 as among the things to be considered in measuring intensity of effect, affected historic properties certainly SHOULD be identified. There should be some kind of systematic linkage to Section 106 review.

Does the EA describe cultural resources other than historic properties? If so, what are they?

Discussion: Consider all the other cultural resource legal requirements -- NAGPRA, AIRFA, and the others, as well as NEPA itself.

Does the EA discuss what effects are likely on cultural resources?

Discussion: Since the EA is all about whether there will be significant impacts, it should be pretty explicit about what effects may occur. Is it? Be alert to vague statements and uncertainties (e.g., "inventories have not been completed," "no cultural resources are known to exist."). Also be on the lookout for unsubstantiated statements ("No significant impacts are anticipated..."). And be alert to deferral ("Impacts on historic properties will be mitigated under Section 106").

Does the EA propose ways of avoiding, reducing, or mitigating adverse effects on cultural resources? What are they? Do you think they are adequate?

Discussion: Remember that if the EA doesn't lead to an EIS, it (or the FONSI) has to demonstrate that there will be NO SIGNIFICANT IMPACT. So if the EA identifies any potential significant impacts, it ought to say (or the FONSI ought to say) how these will be avoided, mitigated, or otherwise reduced BELOW SIGNIFICANCE. If it doesn't, that's a flaw. And of course you can argue with the agency about the adequacy of its mitigation measures. Remember that the critical test is whether the measures reduce the level of impact below significance. What constitutes a "significant" impact can be debated, of course, and you should debate it if you don't agree with the agency. In any event, the agency should be able to say why it doesn't think there will be a significant impact, and defend it.

Is it likely that cultural resource legal authorities in addition to NEPA are relevant to the project and its effects? If so, how does the EA address them?

Discussion: Think about each non-NEPA cultural resource law and the resources to which it
pertains. Has each one been addressed? Do they all need to be, given the kinds of resources and effects likely to be involved? Is the way each realistically predictable kind of effect is addressed adequate, with reference to the requirements of the pertinent laws? For example, have the NAGPRA regulations been followed if the project might unearth Native American cultural items on Federal land?

Is the EA responsive to culture-related environmental justice concerns?

Discussion: Does it look like there are low-income populations or minority communities involved? Consider both populations that actually live in the area to be affected and groups that may use the area for subsistence, recreation, religious, or other cultural reasons. If such populations may be involved, have special efforts been made to involve them, seek out their concerns, and address them? Is it likely that there will be disproportionate, significant impacts? If so, have adequate provisions for mitigation been made to reduce them below significance?

Does the EA reflect consultation with stakeholders having cultural resource concerns? Has the consultation been adequate?

Discussion: Has a reasonable effort been made to find stakeholders, and to involve them? Have they actually been consulted? If there are cultural, linguistic, or other barriers to their participation, have these been successfully addressed? This is very often a weak point in EA analyses.

Does the EA lead to a clear and understandable conclusion as to whether the project is likely to have significant impacts on the quality of the human environment? Do you agree with the conclusion from a cultural standpoint? Why or why not?

Discussion: This, of course, is where the rubber meets the road. Your letter should bring together your observations on all the preceding questions reach a clear conclusion, and challenge the agency about any inadequacies.

Categorical Exclusion

What is it?

The lowest level of NEPA analysis is that given to CATEXs (also called CX, CatEx, CatX, etc.).

"Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (Sec. 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required ... 40CFR 1508.4

"Extraordinary Circumstances" CATEX lists must provide for "extraordinary circumstances" under which, in essence, a CATEX is not a CATEX, and further analysis is required,
Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect. 40 CFR 1508.4

Extraordinary circumstances, and ways of screening CATEX assignments to determine whether such circumstances exist, are set forth in each agency's NEPA procedures. Based on the regulatory definition of the term "significantly" at 40 CFR 1508.27, agencies typically list as extraordinary circumstances such situations as those where public health may be affected, where wetlands, endangered species, or historic properties may be adversely affected, where there are unique risks or uncertainties about impacts, and where a violation of law or environmental protection procedures may occur. Often an agency will use a "checklist" to tick off possible "extraordinary circumstances."

Some agencies conduct or contract for CATEX screening studies, under various names. These studies are done in order to determine whether "extraordinary circumstances" exist that require further review.

Typically, such a study will involve a quick review of the project site and its surroundings, consultation with local authorities and other knowledgeable parties, and a study of pertinent background requirements. It may result in a short written report, or simply in completion of a checklist.

A CATEX screening study may provide the context in which the agency addresses other environmental review requirements, such as those under Section 106 of the National Historic Preservation Act.

The Section 106 regulations, 36 CFR 800, issued by the Advisory Council on Historic Preservation (ACHP), make a point of requiring agencies to consider whether a categorically excluded project requires review under Section 106.

If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the Agency Official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to Sec. 800.3(a). If so, the Agency Official shall proceed with Section 106 review in accordance with the procedures in this subpart. 36 CFR 800.8(b)

This emphasizes that:

- Section 106 and NEPA are separate authorities; the fact that something is excluded from NEPA review doesn’t mean it’s excluded from Section 106 review; and
- Potential impacts on historic properties are among the potential "extraordinary circumstances" that need to be considered when screening a CatEx.
If you're assigned to screen (by whatever name this procedure's called in your agency) a proposed action to see if it's categorically excluded from detailed NEPA review, you're going to have some kind of internal procedure to follow. There's an excellent chance, however, that this procedure will be very much out of date, incomplete, and ineffective. It may employ some kind of checklist with a question like --

- Will the project affect any districts, sites, buildings, structures, or objects included in or eligible for the National Register of Historic Places?

-- or --

- Will any significant cultural resources be affected?

And it may give you no guidance whatever about how to figure out the answer to the question.

The first question is in a way the simpler one to answer, because there are definite procedures for answering it; these are set forth in the regulations of the Advisory Council on Historic Preservation (ACHP) for Section 106 of the National Historic Preservation Act (36 CFR 800). You're going to need to follow those regulations in order to decide whether historic properties are likely to be affected.

Hints:

- If the project involves altering buildings or structures, digging in the ground, disposing of real property, or changing land use, there's probably the potential for effects on historic properties. Whether such effects will actually occur is something you're going to have to find out.

- It's not enough to just check the published National Register of Historic Places.

- Historic places aren't always recognizable. They're not always buildings; they may be sites, or districts, and they probably don't have signs identifying them as historic.

- You're probably going to have to do some kind of study. Examine the ACHP regulations, discuss things with your agency's historic preservation or cultural resource staff, and consult with outside authorities as needed -- for example, the State or Tribal Historic Preservation Officer, local historic preservation officials, and local preservation organizations.

In addition to considering historic properties, you ought to consider impacts on other types of "cultural resources," even if your CatEx procedures don't explicitly ask you to. Other cultural impacts -- for example, on an Indian tribe's religious practices, or on the use of resources for cultural purposes by a minority group or low income community -- have to be considered under NEPA, whether or not the people who composed your CatEx checklist knew it at the time they prepared the procedures you're trying to follow. Generally speaking ...
• If the project will disturb the ground, there might be impacts on archeological sites, which may or may not be historic properties (i.e. eligible for the National Register of Historic Places), and which may or may not have religious or cultural value to descendant communities. Following the Section 106 regulations should help you deal with this possibility. You may also need to deal with the regulations implementing the Native American Graves Protection and Repatriation Act. You'll need to consult archeological and historic preservation authorities, and Indian tribes if Native American graves or cultural items may be affected.

• If the project will result in the disposition of documents, you're going to need to comply with your agency's procedures for implementing the Federal Records Act. Failure to do so can result in fines and imprisonment. Your agency should have an FRA coordinator who can advise you.

• If the project may do anything to the economy of an area, or to land use, or access to natural resources, or traffic volume or traffic patterns, it may have impacts on the sociocultural activities of communities and neighborhoods, which will need to be considered under NEPA. Finding out about this may require special social impact analyses, which will probably have to be done under contract.

• If the project involves the use of rural land, including but not limited to Federal land, there may be Native American cultural issues to be concerned about -- not only general social impact issues, but also issues involving the religious use of natural areas, subsistence and religious use of natural resources, perceptions of spirituality, and ancestral burial sites. Consultation with potentially concerned Native American groups will be important, and may be required by law and executive order. Your agency should have an Indian tribal or Native American liaison official who can advise you. Think about whether low income groups or minority communities might be affected by the project, because they live near where it is supposed to occur or because they use the area or value it for some reason. Consider possible cultural concerns -- for example, community concern about a place where traditional fishing is done, or about the character of a neighborhood -- as well as concerns about such obvious impacts as exposure to toxic materials. If such groups or communities may be involved, you may have environmental justice issues to deal with, that you'll need to resolve before deciding whether the project can be categorically excluded.

"Outside" Review of a Categorically Excluded Project

Common CATEx problems

Typical problems with agency CatEx screening include:

• No screening at all. Agency procedures all call for some sort of effort to determine whether extraordinary circumstances exist, but often such efforts are not carried out.

• Inadequate direction. A checklist will be used, for example, that simply asks something like "Will the project impact a property listed in or eligible for the National Register of
Historic Places," without informing the user of what "property," "listed," "eligible," or "National Register" mean, or how one is supposed to find out the answer to the question. A natural response is: "Well, I suppose not; doesn't look very historic to me."

- Inadequate training. Thousands and thousands of CatEx decisions are made (explicitly or otherwise) every day by thousands and thousands of Federal employees. Few of these people receive training in how to make such decisions.

**Reviewing a particular project**

CatEx screening (by whatever name) takes place pretty much entirely within the agency, so it may be very difficult even to find out that a CatEx decision is being made. However, the screening work must pose questions like "will or will not the action knock down a historic building," and the agency has to answer this question somehow. It's reasonable to ask -- either with respect to a given project or generally -- how this sort of question is posed and answered.

Your first problem, of course, will be even to find out about the CatEx determination. The agency may very well not tell anybody about it. Even if you're a State Historic Preservation Officer (SHPO), or some other official person, you can't necessarily expect agencies to consult with you when they're making CatEx decisions.

However, if you become aware of a project that you're concerned about, if you understand something about the agency's CatEx procedures, you may be able to prevail upon the agency to give the project a second look.

In discussing an agency's CatEx transactions, you should try to relate your comments to the logic of the agency's CatEx screening system (outlined in its NEPA procedures), and to the specific requirements of Section 106 and other authorities:

"Section X47 of your procedures says your action can't be a CatEx if it will have adverse effects on a historic property. Under the Section 106 regulations you're supposed to consult with the SHPO and other concerned parties about whether such adverse effects will occur, but we haven't heard boo from you. Can you account for this?"

If you don't know anything about the agency's CatEx procedures, you can still try asking:

- **How are you addressing the effects of demolishing this building under NEPA?**

To which the agency may reply that under its NEPA procedures, the action is exempt from NEPA review, or "we don't have to do NEPA review on that kind of project," or words to this effect -- which mean, whether the person you're talking with knows it or not, that the agency treats the action as categorically excluded.

You have two answers to this: one is to point out that a project that's categorically excluded under NEPA isn't categorically excluded from review under Section 106 of NHPA, or NAGPRA, or whatever other cultural resource statute you think may be relevant. However, this strategy
essentially accepts the agency's argument that the action is a NEPA CatEx, and throws away NEPA as a tool. A better approach, perhaps coupled with pointing out that NEPA isn't the only law in the land, is to ask:

Oh, so it was categorically excluded? Well, let's see how you analyzed the project to make sure that no extraordinary circumstances existed; as you know, under the Council on Environmental Quality's NEPA regulations, that's supposed to be documented. May we see the pertinent documents, please?

Reviewing an agency's CatEx procedures

Particularly if you are an SHPO, a Tribal Historic Preservation Officer, or a local government's preservation office, it's perfectly appropriate to contact agencies and try to help them rationalize the way their CatEx procedures relate to historic properties. Sending a letter more or less along the following lines to the agency's NEPA coordinator (who should be identifiable upon inquiry to the agency) could have useful results. Note that "screening" may not be the terminology the agency uses for checking its CatEx determinations for extraordinary circumstances. Your letter will work best if written in the agency's language.

Dear Ms. NEPA:

We are concerned about how systematically and effectively potential impacts on historic properties (or cultural resources, if you're concerned about more than historic places) are being considered when your agency screens projects that are categorically excluded from review under the National Environmental Policy Act to ensure that no "extraordinary circumstances" exist requiring additional review. We would like to work with you to make sure that such impacts are thoroughly considered in accordance with all pertinent Federal requirements. Such consideration, of course, can avoid costly and time-consuming project delays, as well as unnecessary damage to important cultural resources. We would appreciate the opportunity to meet with you and review your Categorical Exclusion screening procedures ...

Applying a Categorical Exclusion Checklist

If you have access to the categorical exclusion procedures used by an agency in which you're interested, use those procedures. If not, you can access the General Services Administration (GSA) electronic environmental guide at http://www.gsa.gov/pbs/pt/call-in/envbook/ebook.htm (Note: GSA is one of the very few agencies that provides its list of categorical exclusions online.)

ASSIGNMENT

In the NEPA procedures used (student-preferred agency or GSA), find the list of categorical exclusions, and the system the agency uses to apply them. Review these.

Imagine yourself an employee of the agency, whose job it is to decide whether the following are
categorical exclusions. You have NO budget to support this work, other than a small portion of your own salary.

* Purchase five (5) new cars for the agency motor pool.

* Remodel office to accommodate a consolidated data processing center.

* Dispose of five acres of undeveloped surplus land.

* Any other real or hypothetical project you want to select.

For each project, consider the following questions:

What challenges do you face in applying the agency's CX criteria to each of the above actions?

What can you do to address these challenges?

Now imagine yourself an outside party concerned about one of the above projects and consider the following questions:

What challenges do you face in getting the agency, from your perspective, to consider cultural resources properly in its decision about whether the project should be categorically excluded?

What can you do to address these challenges?

Referring as needed to the NEPA pages, prepare a five-page paper describing your thoughts and conclusions. In instructor-led training, submit your paper to the instructor for review and critique. In self-training, refer to the cheat sheet

**Self-Instruction Cheat Sheet: Applying a Categorical Exclusion Checklist**

In your role as employee of the agency, you are likely to find that some categorical exclusion questions -- like the one about purchasing the cars -- are pretty easy to answer. No, there's virtually no realistic chance that buying some cars will have a significant impact on the quality of the human environment. Others, however, will be harder to address. For example:

- Is the office that will be remodeled in a historic building? If so, do the interior elements of the building, including the office, contribute to the building's significance? If so, will they be altered? Or will the project require, say, replacing windows, and will that have visual effects on surrounding buildings?

- Does the surplus land contain archaeological sites? Indian spiritual places? Places used by local people for traditional subsistence, or recreation? What will happen to the land once it's transferred? What effects may THAT have on surrounding areas, local communities, and so on?
What do you need to know to answer these questions? Do you have the information? Can you afford to get the information?

You also may find that the agency's CX checklist, or whatever device the agency uses for screening its CX decisions, doesn't work very well, or even misleads you. For example, does it ask only about impacts on places INCLUDED in the National Register of Historic Places, and not about those that are ELIGIBLE? Or does it ask about eligible properties too, but not give you any guidance about how to find out which are and which aren't?

In thinking about what you might do to address challenges in applying the agency's procedures, assume that you can't change the procedures. What else can you do? Can you frame a convincing argument based on the logic and language of the procedures? Can you bolster your case by referencing the requirements of other laws -- for example Section 106 of NHPA?

In imagining yourself as an outside party, your first problem is going to be to find out about what the agency is doing, since its CX decisions don't require any particular review. You might consider first what you'd do if you heard about a possibly destructive project and wanted to inquire about it. Would it help to ask where the project stands in NEPA review? What if the agency just says "It's categorically excluded?" What can you do? Next you might consider what you might do programmatically -- supposing you're the SHPO, or a local cultural group. Can you think of ways to make sure you get to review and critique CX decisions routinely?

**NEPA and Section 106 of the National Historic Preservation Act**

**General Rules for NEPA-Section 106 Coordination**

The Advisory Council on Historic Preservation's (ACHP's) Section 106 regulations (36 CFR 800) prescribes the following for the consideration of historic properties under NEPA:

- **Early coordination.** Federal agencies are encouraged to coordinate compliance with Section 106 and the procedures in this part with any steps taken to meet the requirements of... -(NEPA). Agencies should consider their Section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an action is a "major Federal action significantly affecting the quality of the human environment," and therefore requires preparation of an... (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA. (36 CFR 800.8(a)(1))

- **Inclusion of historic preservation issues.** Agency Officials should ensure that preparation of an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) and an EIS and Record of Decision (ROD) includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects. (36 CFR 800.8(a)(3))
• *Actions categorically excluded under NEPA.* If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the Agency Official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to Sec. 800.3(a). If so, the Agency Official shall proceed with Section 106 review in accordance with the procedures in this subpart (36 CFR 800.8(b)).

According to the NEPA regulations, in considering whether an action may "significantly affect the quality of the human environment," an agency must consider, among other things:

- Unique characteristics of the geographic area such as proximity to historic or cultural resources (40 CFR 1508.27(b)(3))

and

- The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places (40 CFR 1508.27(b)(8)).

The NEPA regulations also require that:

- To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the National Historic Preservation act? (40 CFR 1502.25(a))

*General Recommendations for Coordination*

Based on the above requirements, Section 106 review -- that is, the scoping, identification, assessment, and consultation called for in 36 CFR 800.8 -- should be carried out in coordination with NEPA review as follows:

Conduct Section 106 review when screening a project that may be categorically excluded from NEPA review to see whether "extraordinary circumstances" exist requiring further review (40 CFR 1508.4). Whether such extraordinary circumstances are found to exist based on historic property impacts will depend on the severity of the impacts and what the agency's NEPA procedures say, but even if no further review is required under NEPA, Section 106 review must be completed.

During preparation of any EA, conduct Section 106 review in order both to comply with Section 106 itself and in order to determine whether historic resources will be adversely affected, and if so, whether measures can be implemented to reduce adverse effects to a less than significant level. The results of the review should be reported in the FONSI if one is issued, with an explanation of how Section 106 review has resulted in avoiding significant adverse effect.

Section 106 review should be conducted during preparation of any EIS. Scoping, identification, and assessment of effects should be done during the analysis leading to the draft EIS, and the
results should be presented in the DEIS. Consultation to resolve adverse effects should be coordinated with public comment on the DEIS, with the results reported in the FEIS. Any Memorandum of Agreement (MOA) developed under Section 106, or the final comments of the ACHP, should be addressed in the ROD. Unless there is some compelling reason to do otherwise, the Section 106 MOA should be fully executed before the ROD is issued, and the ROD should provide for implementation of the MOA’s terms.

Caution

Note that Section 106 does not deal with impacts on all types of cultural resources, or all cultural aspects of the environment; it deals with impacts on properties included in or eligible for the National Register of Historic Places. Other authorities, such as the American Indian Religious Freedom Act and Executive Order 12898, may require consideration of other cultural resource types, and NEPA itself provides for considering all aspects of the cultural environment -- for example, the cultural use of natural resources. So complying with Section 106 does not guarantee that all impacts on all cultural resource types have been addressed in NEPA analysis.

"Substituting" NEPA Compliance for Section 106 Compliance

It is possible for an agency to "substitute" its NEPA review for the specific steps set forth in the Section 106 regulations, providing specific standards are met. Substitution is not allowed where a project is categorically excluded from NEPA review, and practically speaking it will probably be useful only where relatively large, complicated projects involving many alternatives are under review. If you want to consider substitution, be sure to review the standards carefully.

Section 106 of the National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to "take into account" the effects of their actions on "historic properties" -- that is, "districts, sites, buildings, structures, and objects included in or eligible for the National Register of Historic Places." The National Register is a list of known significant historic places in the United States, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, and the Republics of Palau and the Northern Mariana Islands.

Section 106 is implemented by following regulations issued by the Advisory Council on Historic Preservation.

In general, the Section 106 review process involves the following steps:

- Establish whether the action being considered is a Federal undertaking subject to Section 106 review. Virtually any Federal action that has the potential for environmental impacts -- including many that are categorically excluded from substantial NEPA review -- are subject to Section 106.
- Initiate the review process in consultation with the State and/or Tribal Historic Preservation Officer and other stakeholders. Coordinate with other reviews (e.g. NEPA
review), plan for public participation, and identify who to consult.

- Conduct scoping to determine what should be done to identify historic properties and determine effects on them.

- Conduct the necessary identification studies and analyses, in consultation with stakeholders. Note that properties that are eligible for the National Register must be identified, as well as those already included in the Register. This may include heretofore entirely unknown properties.

- Consult further about any effects that may be adverse.

- Execute and implement a Memorandum of Agreement (MOA) about how adverse effects will be resolved, or obtain and consider a final comment from the ACHP.

Substituting NEPA for Section 106 Review

36 CFR Section 800.8(c) of the NHPA Section 106 regulations allows "use of the NEPA process for Section 106 purposes." Under this subsection, an agency can use the NEPA process and the documents it produces "to comply with Section 106 in lieu of the procedures set forth in Secs. 800.3 through 800.6." This may be a way for an agency to streamline its overall environmental/historic preservation review process. To use this provision, however, the agency and its NEPA work must meet the following tests.

1. The agency must notify the SHPO/THPO and ACHP that it intends to substitute.

2. The agency has to identify consulting parties -- such as Indian tribes and Native Hawaiian groups, local governments, preservation organizations, and so forth -- in a manner consistent with Section 800.3(f).

3. The agency has to identify historic properties and assess effects on them in a manner consistent with Sec. 800.4 through 800.5, but the scope and timing of identification and effect determination may be "phased to reflect the Agency Official's consideration of project alternatives in the NEPA process" and the effort the agency expends must be "commensurate with the assessment of other environmental factors."

4. The agency must consult about the action's effects with the SHPO/THPO, tribes, Native Hawaiian groups, and other consulting parties during NEPA scoping, analysis, and documentation, and it must involve the public in accordance with the agency's NEPA procedures.

5. The agency must develop alternatives and mitigation measures in consultation with the other stakeholders, and describe these measures in its EA or DEIS.

In other words, the agency must do the substantive things that the Section 106 regulations call for, but it doesn't have to follow precisely the same procedures it would if it were doing
"standard" Section 106 review. It has the flexibility to do things in "phases," and the level of effort it puts forth is supposed to be similar to what it does for other kinds of environmental resources.

To guard against abuse of this flexibility, subsection 800.8(c)(2) requires that the EA or EIS be reviewed by the SHPO/THPO and other consulting parties. Any of these may object "prior to or within the time allowed for public comment." In the event of such an objection, the agency must refer the matter to the ACHP, which has 30 days to review the objection and decide whether it agrees with it. If it does, then consultation continues to resolve the objection, or the agency requests final ACHP comment. If the ACHP does not agree with the objection, or fails to respond within 30 days, the agency can complete its NEPA review and make its decision without further Section 106 review.

- Note, however, that when an agency does an EA, there isn't necessarily any public review period in which consulting party review and objection can take place. The Section 106 regulations don't say how to handle this problem.

Based on this consultation and review, subsection 800.8(c)(4) requires the agency to specify in its FONSI or ROD the measures it will take to mitigate adverse effects on historic properties. The agency must also "ensure that the approval of the undertaking is conditioned accordingly," and make "a binding commitment" to do so. Section 800.8(c)(4) goes on to say that "where the NEPA process results in a FONSI, the Agency Official must adopt such a binding commitment through a Memorandum of Agreement drafted in accordance with Sec. 800.6(c)."
EXECUTIVE ORDER 12898

FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY POPULATIONS AND LOW-INCOME POPULATIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it hereby ordered as follows:

Section 1-1. Implementation.

1-101. Agency Responsibilities. To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

1-102. Creation of an Interagency Working Group on Environmental Justice. (a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency ("Administrator") or the Administrator's designee shall convene an interagency Federal Working Group on Environmental Justice ("Working Group"). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) other such Government officials as the President may designate. The Working Group shall report to the President through the Deputy through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b) The Working Group shall: (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in
order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3-3 of this order;

(4) assist in coordinating data collection, required by this order;

(5) examine existing data and studies on environmental justice;

(6) hold public meetings as required in section 5-502(d) of this order; and

(7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1-103. Development of Agency Strategies. (a) Except as provided in section 6-605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b)-(e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, or activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation practices, enforcement and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

(b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

(e) Within 12 months of the date of this order, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. During the 12-month period from the date of this order, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be
promptly undertaken to address particular concerns identified during the development of the
proposed environmental justice strategy, and a schedule for implementing those projects.

(f) Within 24 months of the date of this order, each Federal agency shall report to the Working
Group on its progress in implementing its agency-wide environmental justice strategy.

(g) Federal agencies shall provide additional periodic reports to the Working Group.

1-104. Reports to the President. Within 14 months of the date of this order, the Working
Group shall submit to the President, through the Office of the Deputy Assistant to the President for
Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a
report that describes the implementation of this order, and includes the final environmental
justice strategies described in section 1-103(e) of this order.

Sec. 2-2. Federal Agency Responsibilities for Federal Programs. Each Federal agency shall
conduct its programs, policies, and activities that substantially effect human health or the
environment, in a manner that ensures that such programs, policies, and activities do not have the
effect of excluding persons (including populations) from participation in, denying persons
(including populations) the benefits of, or subjecting persons (including populations) to
discrimination under, such programs, policies, and activities, because of their race, color, or
national origin.

Sec. 3-3. Research, Data Collection, and Analysis.

3-301. Human Health and Environmental Research and Analysis. (a) Environmental human
health research, whenever practicable and appropriate, shall include diverse segments of the
population in epidemiological and clinical studies, including segments at high risk from
environmental hazards, such as minority populations, low-income populations and workers who
may be exposed to substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify
multiple and cumulative exposures.

(c) Federal agencies shall provide minority populations and low-income populations the
opportunity to comment on the development and design of research strategies undertaken
pursuant to this order.

3-302. Human Health and Environmental Data Collection and Analysis. To the extent permitted
by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a): (a) each Federal
agency, whenever practicable and appropriate, shall collect, maintain, and analyze information
assessing and comparing environmental and human health risks borne by populations identified
by race, national origin, or income. To the extent practicable and appropriate, Federal agencies
shall use this information to determine whether their programs, policies, and activities have
disproportionately high and adverse human health or environmental effects on minority
populations and low-income populations.
(b) In connection with the development and implementation of agency strategies in section 1-103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have a substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public, unless prohibited by law: and

(c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001-11050 as mandated in Executive Order No. 12856; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations.

(d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with States, local, and tribal governments.

Sec. 4-4. Subsistence Consumption of Fish and Wildlife.

4-401. Consumption Patterns. In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risk of those consumption patterns.

4-402. Guidance. Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

Sec. 5-5. Public Participation and Access to Information. (a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

(b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices and hearings relating to human health or the environment for limited English-speaking populations.
(c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the contents and recommendations discussed at the public meetings.

Sec. 6-6. General Provisions.

6-601. Responsibility for Agency Implementation. The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

6-602. Executive Order No. 12250. This Executive Order is intended to supplement but not supersede Executive Order No. 12250, which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Nothing herein shall limit the effect or mandate of Executive Order No. 12250.

6-603. Executive Order No. 12875. This Executive Order is not intended to limit the effect or mandate of Executive Order No. 12875.

6-604. Scope. For the purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

6-605. Petitions for Exemptions. The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

6-606. Native American Programs. Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition, the Department of the Interior, in coordination with the Working Group, and after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally-recognized Indian tribes.

6-607. Costs. Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

6-608. General. Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

6-609. Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the
United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

WILLIAM J. CLINTON

THE WHITE HOUSE

Archaeological Resources Protection Act of 1979

AS AMENDED

This Act became law on October 31, 1979 (Public Law 96-95; 16 U.S.C. 470aa-mm), and has been amended four times. This description of the Act, as amended, tracks the language of the United States Code except that (following common usage) we refer to the "Act" (meaning the Act, as amended) rather than to the "subchapter" or the "title" of the Code.

Section 2

(a) The Congress finds that—

(1) archaeological resources on public lands and Indian lands are an accessible and irreplaceable part of the Nation's heritage;

(2) these resources are increasingly endangered because of their commercial attractiveness;

(3) existing Federal laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources and sites resulting from uncontrolled excavations and pillage; and

(4) there is a wealth of archaeological information which has been legally obtained by private individuals for non-commercial purposes and which could voluntarily be made available to professional archaeologists and institutions.

(b) The purpose of this Act is to secure, for the present and future benefit of the American people, the protection of archaeological resources and sites which are on public lands and Indian lands, and to foster increased cooperation and exchange of information between governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data which were obtained before October 31, 1979 [the date of the enactment of this Act].

Section 3

As used in this Act—

(1) the term "archaeological resource" means any material remains of past human life or activities which are of archaeological interest, as determined under uniform regulations promulgated pursuant to this Act. Such regulations containing such determination shall include, but not
Archaeological Resources Protection Act of 1979

be limited to: pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing items. Nonfossilized and fossilized paleontological specimens, or any portion or piece thereof, shall not be considered archaeological resources, under the regulations under this paragraph, unless found in an archaeological context. No item shall be treated as an archaeological resource under regulations under this paragraph unless such item is at least 100 years of age.

(2) The term "Federal land manager" means, with respect to any public lands, the Secretary of the department, or the head of any other agency or instrumentality of the United States, having primary management authority over such lands. In the case of any public lands or Indian lands with respect to which no department, agency, or instrumentality has primary management authority, such term means the Secretary of the Interior. If the Secretary of the Interior consents, the responsibilities (in whole or in part) under this Act of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary of the Interior with respect to any land managed by such other Secretary or agency head, and in any such case, the term "Federal land manager" means the Secretary of the Interior.

(3) The term "public lands" means—

(A) lands which are owned and administered by the United States as part of—

(i) the national park system,

(ii) the national wildlife refuge system, or

(iii) the national forest system; and

(B) all other lands the fee title to which is held by the United States, other than lands on the Outer Continental Shelf and lands which are under the jurisdiction of the Smithsonian Institution.
Archaeological Resources Protection Act of 1979

(4) The term "Indian lands" means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for any subsurface interests in lands not owned or controlled by an Indian tribe or an Indian individual.

(5) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688, 43 U.S.C. 1601 et seq.).

(6) The term "person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Indian tribe, or of any State or political subdivision thereof.

(7) The term "State" means any of the fifty States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

Section 4

(a) Any person may apply to the Federal land manager for a permit to excavate or remove any archaeological resource located on public lands or Indian lands and to carry out activities associated with such excavation or removal. The application shall be required, under uniform regulations under this Act, to contain such information as the Federal land manager deems necessary, including information concerning the time, scope, and location and specific purpose of the proposed work.

(b) A permit may be issued pursuant to an application under subsection (a) of this section if the Federal land manager determines, pursuant to uniform regulations under this Act, that—

(i) the applicant is qualified, to carry out the permitted activity,

(ii) the activity is undertaken for the purpose of furthering archaeological knowledge in the public interest,
(3) the archaeological resources which are excavated or removed from public lands will remain the property of the United States, and such resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution, and

(4) the activity pursuant to such permit is not inconsistent with any management plan applicable to the public lands concerned.

(c) If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of this Act.

(d) Any permit under this section shall contain such terms and conditions, pursuant to uniform regulations promulgated under this Act, as the Federal land manager concerned deems necessary to carry out the purposes of this Act.

(e) Each permit under this section shall identify the individual who shall be responsible for carrying out the terms and conditions of the permit and for otherwise complying with this Act and other law applicable to the permitted activity.

(f) Any permit issued under this section may be suspended by the Federal land manager upon his determination that the permittee has violated any provision of subsection (a), (b), or (c) of section 6 of this Act. Any such permit may be revoked by such Federal land manager upon assessment of a civil penalty under section 7 of this Act against the permittee or upon the permittee's conviction under section 6 of this Act.

(g)(i) No permit shall be required under this section or under the Act of June 8, 1906 (16 U.S.C. 431), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal of archaeological resources on Indian lands, an individual tribal member shall be required to obtain permit under this section.
Archaeological Resources Protection Act of 1979

(2) In the case of any permits for the excavation or removal of any archaeological resource located on Indian lands, the permit may be granted only after obtaining the consent of the Indian or Indian tribe owning or having jurisdiction over such lands. The permit shall include such terms and conditions as may be requested by such Indian or Indian tribe.

(h)(1) No permit or other permission shall be required under the Act of June 8, 1906 [16 U.S.C. 431-433], for any activity for which a permit is issued under this section.

(2) Any permit issued under the Act of June 8, 1906 [16 U.S.C. 431-433], shall remain in effect according to its terms and conditions following the enactment of this Act. No permit under this Act shall be required to carry out any activity under a permit issued under the Act of June 8, 1906, before October 31, 1979 [the date of the enactment of this Act] which remains in effect as provided in this paragraph, and nothing in this Act shall modify or affect any such permit.

(i) Issuance of a permit in accordance with this section and applicable regulations shall not require compliance with section 106 of the National Historic Preservation Act, as amended [16 U.S.C. 470f].

(j) Upon the written request of the Governor of any State, the Federal land manager shall issue a permit, subject to the provisions of subsections (b)(3), (b)(4), (c), (e), (f), (g), (h), and (i) of this section for the purpose of conducting archaeological research, excavation, removal, and curation, on behalf of the State or its educational institutions, to such Governor or to such designee as the Governor deems qualified to carry out the intent of this Act.

Section 5

The Secretary of the Interior may promulgate regulations providing for—

(i) the exchange, where appropriate, between suitable universities, museums, or other scientific or educational institutions, of archaeological resources removed from public lands and Indian lands pursuant to this Act, and
Archaeological Resources Protection Act of 1979

(2) the ultimate disposition of such resources and other resources removed pursuant to the Act of June 27, 1960 [the Reservoir Salvage Act, as amended, also known as the Archeological and Historic Preservation Act of 1974 [16 U.S.C. 469-469c-1] or the Act of June 8, 1906 [the Antiquity Act of 1906, as amended, 16 U.S.C. 431-433].

Any exchange or ultimate disposition under such regulation of archaeological resources excavated or removed from Indian lands shall be subject to the consent of the Indian or Indian tribe which owns or has jurisdiction over such lands. Following promulgation of regulations under this section, notwithstanding any other provision of law, such regulations shall govern the disposition of archaeological resources removed from public lands and Indian lands pursuant to this Act.

Section 6

(a) No person may excavate, remove, damage, or otherwise alter or deface or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under section 4 of this Act, a permit referred to in section 4(h)(2) of this Act, or the exemption contained in section 4(g)(1) of this Act.

(b) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange any archaeological resource if such resource was excavated or removed from public lands or Indian lands in violation of—

(1) the prohibition contained in subsection (a) of this section, or

(2) any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) No person may sell, purchase, exchange, transport, receive, or offer to sell, purchase, or exchange, in interstate or foreign commerce, any archaeological resource excavated, removed, sold, purchased, exchanged, transported, or received in violation of any provision, rule, regulation, ordinance, or permit in effect under State or local law.
Archaeological Resources Protection Act of 1979

(d) Any person who knowingly violates, or counsels, procures, solicits, or employs any other person to violate, any prohibition contained in subsection (a), (b), or (c) of this section shall, upon conviction, be fined not more than $10,000 or imprisoned not more than one year, or both: Provided, however, That if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of $500, such person shall be fined not more than $20,000 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person shall be fined not more than $100,000, or imprisoned not more than five years, or both.

(e) The prohibitions contained in this section shall take effect on October 31, 1979 [the date of the enactment of this Act].

(f) Nothing in subsection (b)(1) of this section shall be deemed applicable to any person with respect to any archaeological resource which was in the lawful possession of such person prior to October 31, 1979.

(g) Nothing in subsection (d) of this section shall be deemed applicable to any person with respect to the removal of arrowheads located on the surface of the ground.

Section 7

(a)(1) Any person who violates any prohibition contained in an applicable regulation or permit issued under this Act may be assessed a civil penalty by the Federal land manager concerned. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Federal land manager concerned.

(2) The amount of such penalty shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—
Archaeological Resources Protection Act of 1979

(A) the archaeological or commercial value of the archaeological resource involved, and

(B) the cost of restoration and repair of the resource and the archaeological site involved.

Such regulations shall provide that, in the case of a second or subsequent violation by any person, the amount of such civil penalty may be double the amount which would have been assessed if such violation were the first violation by such person. The amount of any penalty assessed under this subsection for any violation shall not exceed any amount equal to double the cost of restoration and repair of resources and archaeological sites damaged and double the fair market value of resources destroyed or not recovered.

(3) No penalty shall be assessed under this section for the removal of arrowheads located on the surface of the ground.

(b)(1) Any person aggrieved by an order assessing a civil penalty under subsection (a) of this section may file a petition for judicial review of such order with the United States District Court for the District of Columbia or for any other district in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued. The court shall hear such action on the record made before the Federal land manager and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) If any person fails to pay an assessment of a civil penalty—

(A) after the order making the assessment has become a final order and such person has not filed a petition for judicial review of the order in accordance with paragraph (1), or

(B) after a court in an action brought under paragraph (1) has entered a final judgment upholding the assessment of a civil penalty, the Federal land managers may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide
Archaeological Resources Protection Act of 1979

any such action. In such action, the validity and amount of such penalty shall not be subject to review.

16 U.S.C. 470ff(c), Hearings

(c) Hearings held during proceedings for the assessment of civil penalties authorized by subsection (a) of this section shall be conducted in accordance with section 554 of title 5 [of the United States Code].

Subpoenas

The Federal land manager may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths.

Witness fees

Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Federal land manager or to appear and produce documents before the Federal land manager, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Section 8

(a) Upon the certification of the Federal land manager concerned, the Secretary of the Treasury is directed to pay from penalties and fines collected under section 6 and 7 of this Act an amount equal to one-half of such penalty or fine, but not to exceed $500, to any person who furnishes information which leads to the findings of a civil violation, or the conviction of criminal violation, with respect to which such penalty or fine was paid. If several persons provided such information, such amount shall be divided among such persons. No officer or employee of the United States or of any State or local government who furnishes information or renders service in the performance of his official duties shall be eligible for payment under this subsection.
Archeological Resources Protection Act of 1979

16 U.S.C. 470gg(b), Forfeitures
(b) All archeological resources with respect to which a violation of subsection (a), (b), or (c) of section 6 of this Act occurred and which are in the possession of any person, and all vehicles and equipment of any person which were used in connection with such violation, may be (in the discretion of the court or administrative law judge, as the case may be) subject to forfeiture to the United States upon—

(i) such person's conviction of such violation under section 6 of this Act,

(2) assessment of a civil penalty against such person under section 7 of this Act with respect to such violation, or

(3) a determination by any court that such archeological resources, vehicles, or equipment were involved in such violation.

16 U.S.C. 470gg(c), Disposition of penalties collected and items forfeited in cases involving archeological resources excavated or removed from Indian lands
(c) In cases in which a violation of the prohibition contained in subsection (a), (b), or (c) of section 6 of this Act involve archeological resources excavated or removed from Indian lands, the Federal land manager or the court, as the case may be, shall provide for the payment to the Indian or Indian tribe involved of all penalties collected pursuant to section 7 of this Act and for the transfer to such Indian or Indian tribe of all items forfeited under this section.

Section 9

(a) Information concerning the nature and location of any archeological resource for which the excavation or removal requires a permit or other permission under this Act or under any other provision of Federal law may not be made available to the public under subchapter II of chapter 5 of title 5 [of the United States Code] or under any other provision of law unless the Federal land manager concerned determines that such disclosure would—

(i) further the purposes of this Act or the Act of June 27, 1960 [the Reservoir Salvage Act, as amended, 16 U.S.C. 469-469c-r] and

(2) not create a risk of harm to such resources or to the site at which such resources are located.

(h) Notwithstanding the provisions of subsection (a) of this section, upon the written request of the Governor of any State, which request shall state—
Archaeological Resources Protection Act of 1979

(i) the specific site or area for which information is sought,

(ii) the purpose for which such information is sought,

(iii) a commitment by the Governor to adequately protect the confidentiality of such information to protect the resource from commercial exploitation,

the Federal land manager concerned shall provide to the Governor information concerning the nature and location of archaeological resources within the State of the requesting Governor.

Section 10

(a) The Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority, after consultation with other Federal land managers, Indian tribes, representatives of concerned State agencies, and after public notice and hearing, shall promulgate such uniform rules and regulations as may be appropriate to carry out the purposes of this Act. Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat.469; 42 U.S.C. 1996 and 1996a).

Each uniform rule or regulation promulgated under this Act shall be submitted on the same calendar day to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Natural Resources of the United States House of Representatives, and no such uniform rule or regulation may take effect before the expiration of a period of ninety calendar days following the date of its submission to such Committees.

(b) Each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations under subsection (a) of this section, as may be appropriate for the carrying out of his functions and authorities under this Act.
Archaeological Resources Protection Act of 1979

(c) Each Federal land manager shall establish a program to increase public awareness of the significance of the archaeological resources located on public lands and Indian lands and the need to protect such resources.

Section 11

The Secretary of the Interior shall take such action as may be necessary, consistent with the purposes of this Act, to foster and improve the communication, cooperation, and exchange of information between—

1. private individuals having collections of archaeological resources and data which were obtained before October 31, 1979 [the date of the enactment of this Act], and

2. Federal authorities responsible for the protection of archaeological resources on the public lands and Indian lands and professional archaeologists and associations of professional archaeologists.

In carrying out this section, the Secretary shall, to the extent practicable and consistent with the provisions of this Act, make efforts to expand the archaeological data base for the archaeological resources of the United States through increased cooperation between private individuals referred to in paragraph (1) and professional archaeologists and archaeological organizations.

Section 12

(a) Nothing in this Act shall be construed to repeal, modify, or impose additional restrictions on the activities permitted under existing laws and authorities relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands.

(b) Nothing in this Act applies to, or requires a permit for, the collection for private purposes of any rock, coin, bullet, or mineral which is not an archaeological resource, as determined under uniform regulations promulgated under section 3 (i) of this Act.
Archaeological Resources Protection Act of 1979

(c) Nothing in this Act shall be construed to affect any land other than public land or Indian land or to affect the lawful recovery, collection, or sale of archaeological resources from land other than public land or Indian land.

Section 13

As part of the annual report required to be submitted by the specified committees of the Congress pursuant to section 5(c) of the Act of June 17, 1960 [the Reservoir Salvage Act, as amended, 74 Stat. 220; 16 U.S.C. 469a-3(c)], the Secretary of the Interior shall comprehensively report as a separate component on the activities carried out under the provisions of this Act, and he shall make such recommendations as he deems appropriate as to changes or improvements needed in the provisions of this Act. Such report shall include a brief summary of the actions undertaken by the Secretary under section 11 of this Act, relating to cooperation with private individuals.

Section 14

The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority shall—

(a) develop plans for surveying lands under their control to determine the nature and extent of archaeological resources on those lands;

(b) prepare a schedule for surveying lands that are likely to contain the most scientifically valuable archaeological resources; and

(c) develop documents for the reporting of suspected violations of this Act and establish when and how those documents are to be completed by officers, employees, and agents of their respective agencies.
43 CFR 7: REGULATIONS FOR

ARCHAEOLOGICAL RESOURCES PROTECTION ACT (ARPA)

(as revised through October 1, 1997)

TITLE 43—PUBLIC LANDS: INTERIOR, Subtitle A—Office of the Secretary of the Interior
PART 7—PROTECTION OF ARCHAEOLOGICAL RESOURCES

Subpart A—Uniform Regulations
Sec.
7.1 Purpose.
7.2 Authority.
7.3 Definitions.
7.4 Prohibited acts and criminal penalties.
7.5 Permit requirements and exceptions.
7.6 Application for permits and information collection.
7.7 Notification to Indian tribes of possible harm or destruction of sites on public lands having religious or cultural Importance.
7.8 Issuance of permits.
7.9 Terms and conditions of permits.
7.10 Suspension and revocation of permits.
7.11 Appeals relating to permits.
7.12 Relationship to section 106 of the National Historic Preservation Act.
7.13 Custody of archaeological resources.
7.14 Determination of archaeological or commercial value and cost of restoration and repair.
7.15 Assessment of civil penalties.
7.16 Civil penalty amounts.
7.17 Other penalties and rewards.
7.18 Confidentiality of archaeological resource information.
7.19 Report.
7.20 Public awareness programs.
7.21 Surveys and schedules.

Subpart B—Department of the Interior Supplemental Regulations
7.31 Scope and authority.
7.32 Supplemental definitions.
7.33 Determination of loss or absence of archaeological interest.
7.34 Procedural information for securing permits.
7.35 Permitting procedures for Indian lands.
7.36 Permit reviews and disputes.
7.37 Civil penalty hearings procedures.

Sec. 7.1 Purpose.
(a) The regulations in this part implement provisions of the Archaeological Resources Protection Act of 1979, as amended (16 U.S.C. 470aa-mm) by establishing the uniform definitions, standards, and procedures to be followed by all Federal land managers in providing protection for archaeological resources, located on public lands and Indian lands of the United States. These regulations enable Federal land managers to protect archaeological resources, taking into consideration provisions of the American Indian Religious Freedom Act (92 Stat. 469; 42 U.S.C. 1996), through permits authorizing excavation and/or removal of archaeological resources, through civil penalties for unauthorized excavation and/or removal, through provisions for the preservation of archaeological resource collections and data, and through provisions for ensuring confidentiality of information about archaeological resources when disclosure would threaten the archaeological resources.
(b) The regulations in this part do not impose any new restrictions on activities permitted under other laws, authorities, and regulations relating to mining, mineral leasing, reclamation, and other multiple uses of the public lands. [49 FR 1027, Jan. 6, 1984, as amended at 60 FR 5260, Jan. 26, 1995]

Sec. 7.2 Authority.
(a) The regulations in this part are promulgated pursuant to section 10(a) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ii), which requires that the Secretaries of the Interior, Agriculture and Defense and the Chairman of the Board of the Tennessee Valley Authority jointly develop uniform rules and regulations for carrying out the purposes of the Act.
(b) In addition to the regulations in this part, section 10(b) of the Act (16 U.S.C. 470ii) provides that each Federal land manager shall promulgate such rules and regulations, consistent with the uniform rules and regulations in this part, as may be necessary for carrying out the purposes of the Act.

Sec. 7.3 Definitions.
As used for purposes of this part:
(a) Archaeological resource means any material remains of human life or activities which are at least 100 years of age, and which are of archaeological interest.
(1) Of archaeological interest means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.
(2) Material remains means physical evidence of human habitation, occupation, use, or activity, including the site, location, or context in which such evidence is situated.
(3) The following classes of material remains (and illustrative examples), if they are at least 100 years of age, are of archaeological interest and shall be considered archaeological resources unless determined otherwise pursuant to paragraph (a)(4) or (a)(5) of this section:
(i) Surface or subsurface structures, shelters, facilities, or features (including, but not limited to, domestic structures, storage structures, cooking structures, ceremonial structures, artificial mounds, earthworks, fortifications, canals, reservoirs, horticultural/agricultural gardens or fields, bedrock mortars or grinding surfaces, rock alignments, cairns, trails, borrow pits, cooking pits, refuse pits, burial pits or graves, hearths, kilns, post molds, wall trenches,
middens);

(iii) Surface or subsurface artifact concentrations or scatters;

(iv) Whole or fragmentary tools, implements, containers, weapons and weapon 
    projectiles, clothing, and ornaments (including, but not limited to, pottery and 
    other ceramics, cordage, basketry and other weaving, bottles and other glassware, 
    bone, ivory, shell, metal, wood, hide, feathers, pigments, and flaked, ground, or 
    pecked stone);

(v) By-products, waste products, or debris resulting from manufacture or use 
    of human-made or natural materials;

(vi) Organic waste (including, but not limited to, vegetal and animal remains, 
    coprolites);

(vii) Human remains (including, but not limited to, bone, teeth, mummified 
    flesh, burials, cremations); 

(viii) Rock carvings, rock paintings, intaglios and other works of artistic or 
    symbolic representation;

(ix) Rockshelters and caves or portions thereof containing any of the above 
    material remains;

(x) All portions of shipwrecks (including, but not limited to, armaments, 
    apparel, tackle, cargo);

(4) The following material remains shall not be considered of archaeological 
    interest, and shall not be considered to be archaeological resources for purposes 
    of the Act and this part, unless found in a direct physical relationship with 
    archaeological resources as defined in this section:

(i) Paleontological remains;

(ii) Coins, bullets, and unworked minerals and rocks.

(5) The Federal land manager may determine that certain material remains, in 
    specified areas under the Federal land manager's jurisdiction, and under specified 
    circumstances, are not or are no longer of archaeological interest and are not to 
    be considered archaeological resources under this part. Any determination made 
    pursuant to this subparagraph shall be documented. Such determination shall in no 
    way affect the Federal land manager's obligations under other applicable laws or 
    regulations.

(6) For the disposition following lawful removal or excavations of Native 
    American human remains and 'cultural items', as defined by the Native American 
    Graves Protection and Repatriation Act (NAGPRA; Pub. L. 101-601; 104 Stat. 3050; 25 
    U.S.C. 3001-13), the Federal land manager is referred to NAGPRA and its 
    implementing regulations.

(b) Arrowhead means any projectile point which appears to have been designed 
    for use with an arrow.

(c) Federal land manager means:

(1) With respect to any public lands, the secretary of the department, or the 
    head of any other agency or instrumentality of the United States, having primary 
    management authority over such lands, including persons to whom such management 
    authority has been officially delegated;

(2) In the case of Indian lands, or any public lands with respect to which no 
    department, agency or instrumentality has primary management authority, such term 
    means the Secretary of the Interior;

(3) The Secretary of the Interior, when the head of any other agency or 
    instrumentality has, pursuant to section 3(2) of the Act and with the consent of 
    the Secretary of the Interior, delegated to the Secretary of the Interior the 
    responsibilities (in whole or in part) in this part.

(d) Public lands means:

(1) Lands which are owned and administered by the United States as part of the 
    national park system, the national wildlife refuge system, or the national forest 
    system; and

(2) All other lands the fee title to which is held by the United States, except
lands on the Outer Continental Shelf, lands under the jurisdiction of the Smithsonian Institution, and Indian lands.

(e) Indian lands means lands of Indian tribes, or Indian individuals, which are either held in trust by the United States or subject to a restriction against alienation imposed by the United States, except for subsurface interests not owned or controlled by an Indian tribe or Indian individual.

(f) Indian tribe as defined in the Act means any Indian tribe, band, nation, or other organized group or community, including any Alaska village or regional or village corporation as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (85 Stat. 688). In order to clarify this statutory definition for purposes of this part, "Indian tribe" means:

(1) Any tribal entity which is included in the annual list of recognized tribes published in the Federal Register by the Secretary of the Interior pursuant to 25 CFR part 54;

(2) Any other tribal entity acknowledged by the Secretary of the Interior pursuant to 25 CFR part 54 since the most recent publication of the annual list; and

(3) Any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), and any Alaska Native village or tribe which is recognized by the Secretary of the Interior as eligible for services provided by the Bureau of Indian Affairs.

(g) Person means an individual, corporation, partnership, trust, institution, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the United States, or of any Indian tribe, or of any State or political subdivision thereof.

(h) State means any of the fifty states, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.


[49 FR 1027, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984, as amended at 60 FR 5260, Jan. 26, 1995]

Sec. 7.4 Prohibited acts and criminal penalties.

(a) Under section 6(a) of the Act, no person may excavate, remove, damage, or otherwise alter or deface, or attempt to excavate, remove, damage, or otherwise alter or deface any archaeological resource located on public lands or Indian lands unless such activity is pursuant to a permit issued under Sec. 7.8 or exempted by Sec. 7.5(b) of this part.

(b) No person may sell, purchase, exchange, transport, or receive any archaeological resource, if such resource was excavated or removed in violation of:

(1) The prohibitions contained in paragraph (a) of this section; or

(2) Any provision, rule, regulation, ordinance, or permit in effect under any other provision of Federal law.

(c) Under section (d) of the Act, any person who knowingly violates or counsels, procures, solicits, or employs any other person to violate any prohibition contained in section 6 (a), (b), or (c) of the Act will, upon conviction, be fined not more than $10,000.00 or imprisoned not more than one year, or both: provided, however, that if the commercial or archaeological value of the archaeological resources involved and the cost of restoration and repair of such resources exceeds the sum of $500.00, such person will be fined not more than $20,000.00 or imprisoned not more than two years, or both. In the case of a second or subsequent such violation upon conviction such person will be fined not more than $100,000.00, or imprisoned not more than five years, or both.

[49 FR 1027, Jan. 6, 1984, as amended at 60 FR 5260, Jan. 26, 1995]
Sec. 7.5 Permit requirements and exceptions.

(a) Any person proposing to excavate and/or remove archaeological resources from public lands or Indian lands, and to carry out activities associated with such excavation and/or removal, shall apply to the Federal land manager for a permit for the proposed work, and shall not begin the proposed work until a permit has been issued. The Federal land manager may issue a permit to any qualified person, subject to appropriate terms and conditions, provided that the person applying for a permit meets conditions in Sec. 7.8(a) of this part.

(b) Exceptions:

(1) No permit shall be required under this part for any person conducting activities on the public lands under other permits, leases, licenses, or entitlements for use, when those activities are exclusively for purposes other than the excavation and/or removal of archaeological resources, even though those activities might incidentally result in the disturbance of archaeological resources. General earth-moving excavation conducted under a permit or other authorization shall not be construed to mean excavation and/or removal as used in this part. This exception does not, however, affect the Federal land manager’s responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses, or entitlements for use; any excavation and/or removal of archaeological resources required for compliance with those authorities shall be conducted in accordance with the permit requirements of this part.

(2) No permit shall be required under this part for any person collecting for private purposes any rock, coin, bullet, or mineral which is not an archaeological resource as defined in this part, provided that such collecting does not result in disturbance of any archaeological resource.

(3) No permit shall be required under this part or under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), for the excavation or removal by any Indian tribe or member thereof of any archaeological resource located on Indian lands of such Indian tribe, except that in the absence of tribal law regulating the excavation or removal or archaeological resources on Indian lands, an individual tribal member shall be required to obtain a permit under this part.

(4) No permit shall be required under this part for any person to carry out any archaeological activity authorized by a permit issued under section 3 of the Act of June 8, 1906 (16 U.S.C. 432), before the enactment of the Archaeological Resources Protection Act of 1979. Such permit shall remain in effect according to its terms and conditions until expiration.

(5) No permit shall be required under section 3 of the Act of June 8, 1906 (16 U.S.C. 432) for any archaeological work for which a permit is issued under this part.

(c) Persons carrying out official agency duties under the Federal land manager’s direction, associated with the management of archaeological resources, need not follow the permit application procedures of Sec. 7.6. However, the Federal land manager shall insure that provisions of Secs. 7.8 and 7.9 have been met by other documented means, and that any official duties which might result in harm to or destruction of any Indian tribal religious or cultural site, as determined by the Federal land manager, have been the subject of consideration under Sec. 7.7.

(d) Upon the written request of the Governor of any State, on behalf of the State or its educational institutions, the Federal land manager shall issue a permit, subject to the provisions of Secs. 7.5(b)(5), 7.7, 7.8(a) (3), (4), (5), (6), and (7), 7.9, 7.10, 7.12, and 7.13(a) to such Governor or to such designee as the Governor deems qualified to carry out the intent of the Act, for purposes of conducting archaeological research, excavating and/or removing archaeological resources, and safeguarding and preserving any materials and data collected in a university, museum, or other scientific or educational institution approved by the Federal land manager.

(e) Under other statutory, regulatory, or administrative authorities governing
the use of public lands and Indian lands, authorizations may be required for activities which do not require a permit under this part. Any person wishing to conduct on public lands or Indian lands any activities related to but believed to fall outside the scope of this part should consult with the Federal land manager, for the purpose of determining whether any authorization is required, prior to beginning such activities.

Sec. 7.6 Application for permits and information collection.
(a) Any person may apply to the appropriate Federal land manager for a permit to excavate and/or remove archaeological resources from public lands or Indian lands and to carry out activities associated with such excavation and/or removal.
(b) Each application for a permit shall include:
   (1) The nature and extent of the work proposed, including how and why it is proposed to be conducted, proposed time of performance, locational maps, and proposed outlet for public written dissemination of the results.
   (2) The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimal qualifications listed in Sec. 7.8(a).
   (3) The name and address of the individual(s), if different from the individual(s) named in paragraph (b)(2) of this section, proposed to be responsible for carrying out the terms and conditions of the permit.
   (4) Evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities.
   (5) Where the application is for the excavation and/or removal of archaeological resources on public lands, the names of the university, museum, or other scientific or educational institution in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work. Applicants shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard and preserve these materials as property of the United States.
   (6) Where the application is for the excavation and/or removal of archaeological resources on Indian lands, the name of the university, museum, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work, and all collections in the event the Indian owners do not wish to take custody or otherwise dispose of the archaeological resources. Applicants shall submit written certification, signed by an authorized official of the institution, or willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work.
   (c) The Federal land manager may require additional information, pertinent to land management responsibilities, to be included in the application for permit and shall so inform the applicant.
   (d) Paperwork Reduction Act. The information collection requirement contained in Sec. 7.6 of these regulations has been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance number 1024-0037. The purpose of the information collection is to meet statutory and administrative requirements in the public interest. The information will be used to assist Federal land managers in determining that applicants for permits are qualified, that the work proposed would further archaeological knowledge, that archaeological resources and associated records and data will be properly preserved, and that the permitted activity would not conflict with the management of the public lands involved. Response to the information requirement is necessary in order for an applicant to obtain a benefit.
Sec. 7.7 Notification to Indian tribes of possible harm to, or destruction of, sites on public lands having religious or cultural importance.

(a) If the issuance of a permit under this part may result in harm to, or destruction of, any Indian tribal religious or cultural site on public lands, as determined by the Federal land manager, at least 30 days before issuing such a permit the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of section 9 of the Act.

(1) Notice by the Federal land manager to any Indian tribe shall be sent to the chief executive officer or other designated official of the tribe. Indian tribes are encouraged to designate a tribal official to be the focal point for any notification and discussion between the tribe and the Federal land manager.

(2) The Federal land manager may provide notice to any other Native American group that is known by the Federal land manager to consider sites potentially affected as being of religious or cultural importance.

(3) Upon request during the 30-day period, the Federal land manager may meet with official representatives of any Indian tribe or group to discuss their interests, including ways to avoid or mitigate potential harm or destruction such as excluding sites from the permit area. Any mitigation measures which are adopted shall be incorporated into the terms and conditions of the permit under Sec. 7.9.

(4) When the Federal land manager determines that a permit applied for under this part must be issued immediately because of an imminent threat of loss or destruction of an archaeological resource, the Federal land manager shall so notify the appropriate tribe.

(b)(1) In order to identify sites of religious or cultural importance, the Federal land manager shall seek to identify all Indian tribes having aboriginal or historic ties to the lands under the Federal land manager's jurisdiction and seek to determine, from the chief executive officer or other designated official of any such tribe, the location and nature of specific sites of religious or cultural importance so that such information may be on file for land management purposes. Information on sites eligible for or included in the National Register of Historic Places may be withheld from public disclosure pursuant to section 304 of the Act of October 15, 1966, as amended (16 U.S.C. 470w-3).

(2) If the Federal land manager becomes aware of a Native American group that is not an Indian tribe as defined in this part but has aboriginal or historic ties to public lands under the Federal land manager's jurisdiction, the Federal land manager may seek to communicate with official representatives of that group to obtain information on sites they may consider to be of religious or cultural importance.

(3) The Federal land manager may enter into agreement with any Indian tribe or other Native American group for determining locations for which such tribe or group wishes to receive notice under this section.

(4) The Federal land manager should also seek to determine, in consultation with official representatives of Indian tribes or other Native American groups, what circumstances should be the subject of special notification to the tribe or group after a permit has been issued. Circumstances calling for notification might include the discovery of human remains. When circumstances for special notification have been determined by the Federal land manager, the Federal land manager will include a requirement in the terms and conditions of permits, under Sec. 7.9(c), for permittees to notify the Federal land manager immediately upon the occurrence of such circumstances. Following the permittee's notification, the Federal land manager will notify and consult with the tribe or group as appropriate. In cases involving Native American human remains and other "cultural items", as defined by NAGPRA, the Federal land manager is referred to NAGPRA and its implementing regulations.

[49 FR 1027, Jan. 6, 1984, as amended at 60 FR 5260, 5261, Jan. 26, 1995]
Sec. 7.8 Issuance of permits.

(a) The Federal land manager may issue a permit, for a specified period of time appropriate to the work to be conducted, upon determining that:

1. The applicant is appropriately qualified, as evidenced by training, education, and/or experience, and possesses demonstrable competence in archaeological theory and methods, and in collecting, handling, analyzing, evaluating, and reporting archaeological data, relative to the type and scope of the work proposed, and also meets the following minimum qualifications:

   (i) A graduate degree in anthropology or archaeology, or equivalent training and experience;
   (ii) The demonstrated ability to plan, equip, staff, organize, and supervise activity of the type and scope proposed;
   (iii) The demonstrated ability to carry research to completion, as evidenced by timely completion of theses, research reports, or similar documents;
   (iv) Completion of at least 16 months of professional experience and/or specialized training in archaeological field, laboratory, or library research, administration, or management, including at least 4 months experience and/or specialized training in the kind of activity the individual proposes to conduct under authority of a permit; and
   (v) Applicants proposing to engage in historical archaeology should have had at least one year of experience in research concerning archaeological resources of the historic period. Applicants proposing to engage in prehistoric archaeology should have had at least one year of experience in research concerning archaeological resources of the prehistoric period.

2. The proposed work is to be undertaken for the purpose of furthering archaeological knowledge in the public interest, which may include but need not be limited to, scientific or scholarly research, and preservation of archaeological data;

3. The proposed work, including time, scope, location, and purpose, is not inconsistent with any management plan or established policy, objectives, or requirements applicable to the management of the public lands concerned;

4. Where the proposed work consists of archaeological survey and/or data recovery undertaken in accordance with other approved uses of the public lands or Indian lands, and the proposed work has been agreed to in writing by the Federal land manager pursuant to section 106 of the National Historic Preservation Act (16 U.S.C. 470f), paragraphs (a)(2) and (a)(3) shall be deemed satisfied by the prior approval.

5. Written consent has been obtained, for work proposed on Indian lands, from the Indian landowner and the Indian tribe having jurisdiction over such lands;

6. Evidence is submitted to the Federal land manager that any university, museum, or other scientific or educational institution proposed in the application as the repository possesses adequate curatorial capability for safeguarding and preserving the archaeological resources and all associated records; and

7. The applicant has certified that, not later than 90 days after the date the final report is submitted to the Federal land manager, the following will be delivered to the appropriate official of the approved university, museum, or other scientific or educational institution, which shall be named in the permit:

   (i) All artifacts, samples, collections, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit where the permit is for the excavation and/or removal of archaeological resources from public lands.
   (ii) All artifacts, samples and collections resulting from work under the requested permit for which the custody or disposition is not undertaken by the Indian owners, and copies of records, data, photographs, and other documents resulting from work conducted under the requested permit, where the permit is for the excavation and/or removal of archaeological resources from Indian lands.

(b) When the area of the proposed work would cross jurisdictional boundaries,
so that permit applications must be submitted to more than one Federal land
manager, the Federal land managers shall coordinate the review and evaluation of
applications and the issuance of permits.

[49 FR 1027, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984]

Sec. 7.9 Terms and conditions of permits.
(a) In all permits issued, the Federal land manager shall specify:
(1) The nature and extent of work allowed and required under the permit,
including the time, duration, scope, location, and purpose of the work;
(2) The name of the individual(s) responsible for conducting the work and, if
different, the name of the individual(s) responsible for carrying out the terms and
conditions of the permit;
(3) The name of any university, museum, or other scientific or educational
institutions in which any collected materials and data shall be deposited; and
(4) Reporting requirements.
(b) The Federal land manager may specify such terms and conditions as deemed
necessary, consistent with this part, to protect public safety and other values
and/or resources, to secure work areas, to safeguard other legitimate land uses,
and to limit activities incidental to work authorized under a permit.
(c) The Federal land manager shall include in permits issued for archaeological
work on Indian lands such terms and conditions as may be requested by the Indian
landowner and the Indian tribe having jurisdiction over the lands, and for
archaeological work on public lands shall include such terms and conditions as may
have been developed pursuant to Sec. 7.7.
(d) Initiation of work or other activities under the authority of a permit
signifies the permittee's acceptance of the terms and conditions of the permit.
(e) The permittee shall not be released from requirements of a permit until all
outstanding obligations have been satisfied, whether or not the term of the permit
has expired.
(f) The permittee may request that the Federal land manager extend or modify a
permit.
(g) The permittee's performance under any permit issued for a period greater
than 1 year shall be subject to review by the Federal land manager, at least
annually.

Sec. 7.10 Suspension and revocation of permits.
(a) Suspension or revocation for cause. (1) The Federal land manager may
suspend a permit issued pursuant to this part upon determining that the permittee
has failed to meet any of the terms and conditions of the permit or has violated
any prohibition of the Act or Sec. 7.4. The Federal land manager shall provide
written notice to the permittee of the suspension, the cause thereof, and the
requirements which must be met before the suspension will be removed.
(2) The Federal land manager may revoke a permit upon assessment of a civil
penalty under Sec. 7.15 upon the permittee's conviction under section 6 of the Act,
or upon determining that the permittee has failed after notice under this section
to correct the situation which led to suspension of the permit.
(b) Suspension or revocation for management purposes. The Federal land manager
may suspend or revoke a permit, without liability to the United States, its agents,
or employees, when continuation of work under the permit would be in conflict with
management requirements not in effect when the permit was issued. The Federal land
manager shall provide written notice to the permittee stating the nature of and
basis for the suspension or revocation.

[49 FR 1027, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984]
Sec. 7.11 Appeals relating to permits.
Any affected person may appeal permit issuance, denial of permit issuance, suspension, revocation, and terms and conditions of a permit through existing administrative appeal procedures, or through procedures which may be established by the Federal land manager pursuant to section 10(b) of the Act and this part.

Sec. 7.12 Relationship to section 106 of the National Historic Preservation Act.
Issuance of a permit in accordance with the Act and this part does not constitute an undertaking requiring compliance with section 106 of the Act of October 15, 1966 (16 U.S.C. 470f). However, the mere issuance of such a permit does not excuse the Federal land manager from compliance with section 106 where otherwise required.

Sec. 7.13 Custody of archaeological resources.
(a) Archaeological resources excavated or removed from the public lands remain the property of the United States.
(b) Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.
(c) The Secretary of the Interior may promulgate regulations providing for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, for the ultimate disposition of archaeological resources, and for standards by which archaeological resources shall be preserved and maintained, when such resources have been excavated or removed from public lands and Indian lands.
(d) In the absence of regulations referenced in paragraph (c) of this section, the Federal land manager may provide for the exchange of archaeological resources among suitable universities, museums, or other scientific or educational institutions, when such resources have been excavated or removed from public lands under the authority of a permit issued by the Federal land manager.
(e) Notwithstanding the provisions of paragraphs (a) through (d) of this section, the Federal land manager will follow the procedures required by NAGPRA and its implementing regulations for determining the disposition of Native American human remains and other "cultural items", as defined by NAGPRA, that have been excavated, removed, or discovered on public lands.

[49 FR 1027, Jan. 6, 1984, as amended at 60 FR 5260, 5261, Jan. 26, 1995]

Sec. 7.14 Determination of archaeological or commercial value and cost of restoration and repair.
(a) Archaeological value. For purposes of this part, the archaeological value of any archaeological resource involved in a violation of the prohibitions in Sec. 7.4 of this part or conditions of a permit issued pursuant to this part shall be the value of the information associated with the archaeological resource. This value shall be appraised in terms of the costs of the retrieval of the scientific information which would have been obtainable prior to the violation. These costs may include, but need not be limited to, the cost of preparing a research design, conducting field work, carrying out laboratory analysis, and preparing reports as would be necessary to realize the information potential.
(b) Commercial value. For purposes of this part, the commercial value of any archaeological resource involved in a violation of the prohibitions in Sec. 7.4 of this part or conditions of a permit issued pursuant to this part shall be its fair market value. Where the violation has resulted in damage to the archaeological resource, the fair market value should be determined using the condition of the archaeological resource prior to the violation, to the extent that its prior condition can be ascertained.
(c) Cost of restoration and repair. For purposes of this part, the cost of
restoration and repair of archaeological resources damaged as a result of a violation of prohibitions or conditions pursuant to this part, shall be the sum of the costs already incurred for emergency restoration or repair work, plus those costs projected to be necessary to complete restoration and repair, which may include, but need not be limited to, the costs of the following:

1. Reconstruction of the archaeological resource;
2. Stabilization of the archaeological resource;
3. Ground contour reconstruction and surface stabilization;
4. Research necessary to carry out reconstruction or stabilization;
5. Physical barriers or other protective devices, necessitated by the disturbance of the archaeological resource, to protect it from further disturbance;
6. Examination and analysis of the archaeological resource including recording remaining archaeological information, where necessitated by disturbance, in order to salvage remaining values which cannot be otherwise conserved;
7. Reinterment of human remains in accordance with religious custom and State, local, or tribal law, where appropriate, as determined by the Federal land manager.
8. Preparation of reports relating to any of the above activities.

Sec. 7.15 Assessment of civil penalties.
(a) The Federal land manager may assess a civil penalty against any person who has violated any prohibition contained in Sec. 7.4 or who has violated any term or condition included in a permit issued in accordance with the Act and this part.
(b) Notice of violation. The Federal land manager shall serve a notice of violation upon any person believed to be subject to a civil penalty, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice:
1. A concise statement of the facts believed to show a violation;
2. A specific reference to the provision(s) of this part or to a permit issued pursuant to this part allegedly violated;
3. The amount of penalty proposed to be assessed, including any initial proposal to mitigate or remit where appropriate, or a statement that notice of a proposed penalty amount will be served after the damages associated with the alleged violation have been ascertained;
4. Notification of the right to file a petition for relief pursuant to paragraph (d) of this section, or to await the Federal land manager's notice of assessment, and to request a hearing in accordance with paragraph (g) of this section. The notice shall also inform the person of the right to seek judicial review of any final administrative decision assessing a civil penalty.
(c) The person served with a notice of violation shall have 45 calendar days from the date of its service (or the date of service of a proposed penalty amount, if later) in which to respond. During this time the person may:
1. Seek informal discussions with the Federal land manager;
2. File a petition for relief in accordance with paragraph (d) of this section;
3. Take no action and await the Federal land manager's notice of assessment;
4. Accept in writing or by payment the proposed penalty, or any mitigation or remission offered in the notice. Acceptance of the proposed penalty or mitigation or remission shall be deemed a waiver of the notice of assessment and of the right to request a hearing under paragraph (g) of this section.
(d) Petition for relief. The person served with a notice of violation may request that no penalty be assessed or that the amount be reduced, by filing a petition for relief with the Federal land manager within 45 calendar days of the date of service of the notice of violation (or of a proposed penalty amount, if later). The petition shall be in writing and signed by the person served with the notice of violation. If the person is a corporation, the petition must be signed by an officer authorized to sign such documents. The petition shall set forth in full the legal or factual basis for the requested relief.
(e) Assessment of penalty. (1) The Federal land manager shall assess a civil penalty upon expiration of the period for filing a petition for relief, upon completion of review of any petition filed, or upon completion of informal discussions, whichever is later.

(2) The Federal land manager shall take into consideration all available information, including information provided pursuant to paragraphs (c) and (d) of this section or furnished upon further request by the Federal land manager.

(3) If the facts warrant a conclusion that no violation has occurred, the Federal land manager shall so notify the person served with a notice of violation, and no penalty shall be assessed.

(4) Where the facts warrant a conclusion that a violation has occurred, the Federal land manager shall determine a penalty amount in accordance with Sec. 7.16.

(f) Notice of assessment. The Federal land manager shall notify the person served with a notice of violation of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The Federal land manager shall include in the notice of assessment:

(1) The facts and conclusions from which it was determined that a violation did occur;

(2) The basis in Sec. 7.16 for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty;

(3) Notification of the right to request a hearing, including the procedures to be followed, and to seek judicial review of any final administrative decision assessing a civil penalty.

(g) Hearings. (1) Except where the right to request a hearing is deemed to have been waived as provided in paragraph (c)(4) of this section, the person served with a notice of assessment may file a written request for a hearing with the adjudicatory body specified in the notice. The person shall enclose with the request for hearing a copy of the notice of assessment, and shall deliver the request as specified in the notice of assessment, personally or by registered or certified mail (return receipt requested).

(2) Failure to deliver a written request for a hearing within 45 days of the date of service of the notice of assessment shall be deemed a waiver of the right to a hearing.

(3) Any hearing conducted pursuant to this section shall be held in accordance with 5 U.S.C. 554. In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Federal land manager under paragraph (f) of this section or any offer of mitigation or remission made by the Federal land manager.

(h) Final administrative decision. (1) Where the person served with a notice of violation has accepted the penalty pursuant to paragraph (c)(4) of this section, the notice of violation shall constitute the final administrative decision;

(2) Where the person served with a notice of assessment has not filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the notice of assessment shall constitute the final administrative decision;

(3) Where the person served with a notice of assessment has filed a timely request for a hearing pursuant to paragraph (g)(1) of this section, the decision resulting from the hearing or any applicable administrative appeal therefrom shall constitute the final administrative decision.

(i) Payment of penalty. (1) The person assessed a civil penalty shall have 45 calendar days from the date of issuance of the final administrative decision in which to make full payment of the penalty assessed, unless a timely request for appeal has been filed with a U.S. District Court as provided in section 7(b)(1) of the Act.

(2) Upon failure to pay the penalty, the Federal land manager may request the Attorney General to institute a civil action to collect the penalty in a U.S. District Court for any district in which the person assessed a civil penalty is
found, resides, or transacts business. Where the Federal land manager is not represented by the Attorney General, a civil action may be initiated directly by the Federal land manager.

(j) Other remedies not waived. Assessment of a penalty under this section shall not be deemed a waiver of the right to pursue other available legal or administrative remedies.

Sec. 7.16 Civil penalty amounts.

(a) Maximum amount of penalty. (1) Where the person being assessed a civil penalty has not committed any previous violation of any prohibition in Sec. 7.4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be the full cost of restoration and repair of archaeological resources damaged plus the archaeological or commercial value of archaeological resources destroyed or not recovered.

(2) Where the person being assessed a civil penalty has committed any previous violation of any prohibition in Sec. 7.4 or of any term or condition included in a permit issued pursuant to this part, the maximum amount of the penalty shall be double the cost of restoration and repair plus double the archaeological or commercial value of archaeological resources destroyed or not recovered.

(3) Violations limited to the removal of arrowheads located on the surface of the ground shall not be subject to the penalties prescribed in this section.

(b) Determination of penalty amount, mitigation, and remission. The Federal land manager may assess a penalty amount less than the maximum amount of penalty and may offer to mitigate or remit the penalty.

(1) Determination of the penalty amount and/or a proposal to mitigate or remit the penalty may be based upon any of the following factors:

(i) Agreement by the person being assessed a civil penalty to return to the Federal land manager archaeological resources removed from public lands or Indian lands;

(ii) Agreement by the person being assessed a civil penalty to assist the Federal land manager in activity to preserve, restore, or otherwise contribute to the protection and study of archaeological resources on public lands or Indian lands;

(iii) Agreement by the person being assessed a civil penalty to provide information which will assist in the detection, prevention, or prosecution of violations of the Act or this part;

(iv) Demonstration of hardship or inability to pay, provided that this factor shall only be considered when the person being assessed a civil penalty has not been found to have previously violated the regulations in this part;

(v) Determination that the person being assessed a civil penalty did not willfully commit the violation;

(vi) Determination that the proposed penalty would constitute excessive punishment under the circumstances;

(vii) Determination of other mitigating circumstances appropriate to consideration in reaching a fair and expeditious assessment.

(2) When the penalty is for a violation on Indian lands, the Federal land manager shall consult with and consider the interests of the Indian landowner and the Indian tribe having jurisdiction over the Indian lands prior to proposing to mitigate or remit the penalty.

(3) When the penalty is for a violation which may have had an effect on a known Indian tribal religious or cultural site on public lands, the Federal land manager should consult with and consider the interests of the affected tribe(s) prior to proposing to mitigate or remit the penalty.

[49 FR 1027, Jan. 6, 1984, as amended at 52 FR 47721, Dec. 16, 1987]

Sec. 7.17 Other penalties and rewards.

(a) Section 6 of the Act contains criminal prohibitions and provisions for
criminal penalties. Section 8(b) of the Act provides that archaeological resources, vehicles, or equipment involved in a violation may be subject to forfeiture.

(b) Section 8(a) of the Act provides for rewards to be made to persons who furnish information which leads to conviction for a criminal violation or to assessment of a civil penalty. The Federal land manager may certify to the Secretary of the Treasury that a person is eligible to receive payment. Officers and employees of Federal, State, or local government who furnish information or render service in the performance of their official duties, and persons who have provided information under Sec. 7.16(b)(1)(iii) shall not be certified eligible to receive payment of rewards.

(c) In cases involving Indian lands, all civil penalty monies and any item forfeited under the provisions of this section shall be transferred to the appropriate Indian or Indian tribe.

Sec. 7.18 Confidentiality of archaeological resource information.

(a) The Federal land manager shall not make available to the public, under subchapter II of chapter 5 of title 5 of the United States Code or any other provision of law, information concerning the nature and location of any archaeological resource, with the following exceptions:

(1) The Federal land manager may make information available, provided that the disclosure will further the purposes of the Act and this part, or the Act of June 27, 1960, as amended (16 U.S.C. 469 through 469c), without risking harm to the archaeological resource or to the site in which it is located.

(2) The Federal land manager shall make information available, when the Governor of any State has submitted to the Federal land manager a written request for information, concerning the archaeological resources within the requesting Governor's State, provided that the request includes:

(i) The specific archaeological resource or area about which information is sought;

(ii) The purpose for which the information is sought; and

(iii) The Governor's written commitment to adequately protect the confidentiality of the information.

(b) [Reserved]

[49 FR 1027, Jan. 6, 1984; 49 FR 5923, Feb. 16, 1984]

Sec. 7.19 Report.

(a) Each Federal land manager, when requested by the Secretary of the Interior, will submit such information as is necessary to enable the Secretary to comply with section 13 of the Act and comprehensively report on activities carried out under provisions of the Act.

(b) The Secretary of the Interior will include in the annual comprehensive report, submitted to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate under section 13 of the Act, information on public awareness programs submitted by each Federal land manager under Sec. 7.20(b). Such submittal will fulfill the Federal land manager's responsibility under section 10(c) of the Act to report on public awareness programs.

(c) The comprehensive report by the Secretary of the Interior also will include information on the activities carried out under section 14 of the Act. Each Federal land manager, when requested by the Secretary, will submit any available information on surveys and schedules and suspected violations in order to enable the Secretary to summarize in the comprehensive report actions taken pursuant to section 14 of the Act.

[60 FR 5260, 5261, Jan. 26, 1995]
Sec. 7.20 Public awareness programs.
(a) Each Federal land manager will establish a program to increase public awareness of the need to protect important archaeological resources located on public and Indian lands. Educational activities required by section 10(c) of the Act should be incorporated into other current agency public education and interpretation programs where appropriate.
(b) Each Federal land manager annually will submit to the Secretary of the Interior the relevant information on public awareness activities required by section 10(c) of the Act for inclusion in the comprehensive report on activities required by section 13 of the Act.

[60 FR 5260, 5261, Jan. 26, 1995]

Sec. 7.21 Surveys and schedules.
(a) The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Board of the Tennessee Valley Authority will develop plans for surveying lands under each agency's control to determine the nature and extent of archaeological resources pursuant to section 14(a) of the Act. Such activities should be consistent with Federal agency planning policies and other historic preservation program responsibilities required by 16 U.S.C. 470 et seq. Survey plans prepared under this section will be designed to comply with the purpose of the Act regarding the protection of archaeological resources.
(b) The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Tennessee Valley Authority will prepare schedules for surveying lands under each agency's control that are likely to contain the most scientifically valuable archaeological resources pursuant to section 14(b) of the Act. Such schedules will be developed based on objectives and information identified in survey plans described in paragraph (a) of this section and implemented systematically to cover areas where the most scientifically valuable archaeological resources are likely to exist.
(c) Guidance for the activities undertaken as part of paragraphs (a) through (b) of this section is provided by the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.
(d) Other Federal land managing agencies are encouraged to develop plans for surveying lands under their jurisdictions and prepare schedules for surveying to improve protection and management of archaeological resources.
(e) The Secretaries of the Interior, Agriculture, and Defense and the Chairman of the Tennessee Valley Authority will develop a system for documenting and reporting suspected violations of the various provisions of the Act. This system will reference a set of procedures for use by officers, employees, or agents of Federal agencies to assist them in recognizing violations, documenting relevant evidence, and reporting assembled information to the appropriate authorities. Methods employed to document and report such violations should be compatible with existing agency reporting systems for documenting violations of other appropriate Federal statutes and regulations. Summary information to be included in the Secretary's comprehensive report will be based upon the system developed by each Federal land manager for documenting suspected violations.

[60 FR 5260, 5261, Jan. 26, 1995]

Subpart B--Department of the Interior Supplemental Regulations

Source: 52 FR 9168, Mar. 23, 1987, unless otherwise noted.

Sec. 7.31 Scope and authority.
The regulations in this subpart are promulgated pursuant to section 10(b) of the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470ii), which
Sec. 7.32 Supplemental definitions.

For purposes of this subpart, the following definitions will be used:

(a) Site of religious or cultural importance means, for purposes of Sec. 7.7 of this part, a location which has traditionally been considered important by an Indian tribe because of a religious event which happened there; because it contains specific natural products which are of religious or cultural importance; because it is believed to be dwelling place of, the embodiment of, or a place conducive to communication with spiritual beings; because it contains elements of life-cycle rituals, such as burials and associated materials; or because it has other specific and continuing significance in Indian religion or culture.

(b) Allotted lands means lands granted to Indian individuals by the United States and held in trust for those individuals by the United States.

Sec. 7.33 Determination of loss or absence of archaeological interest.

(a) Under certain circumstances, a Federal land manager may determine, pursuant to Sec. 7.3(a)(5) of this part, that certain material remains are not or are no longer of archaeological interest, and therefore are not to be considered archaeological resources under this part.

(b) The Federal land manager may make such a determination if he/she finds that the material remains are not capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics.

(c) Prior to making a determination that material remains are not or are no longer archaeological resources, the Federal land manager shall ensure that the following procedures are completed:

(1) A professional archaeological evaluation of material remains and similar materials within the area under consideration shall be completed, consistent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716, Sept. 29, 1983) and with 36 CFR parts 60, 63, and 65.

(2) The principal bureau archaeologist or, in the absence of a principal bureau archaeologist, the Department Consulting Archeologist, shall establish whether the material remains under consideration contribute to scientific or humanistic understandings of past human behavior, cultural adaptation and related topics. The principal bureau archaeologist or the Department Consulting Archeologist, as appropriate, shall make a recommendation to the Federal land manager concerning these material remains.

(d) The Federal land manager shall make the determination based upon the facts established by and the recommendation of the principal bureau archaeologist or the Departmental Consulting Archeologist, as appropriate, and shall fully document the basis therefore, including consultation with Indian tribes for determinations regarding sites of religious or cultural importance.

(e) The Federal land manager shall make public notice of the determination and its limitations, including any permitting requirements for activities associated with the materials determined not to be archaeological resources for purposes of this part.

(f) Any interested individual may request in writing that the Departmental Consulting Archeologist review any final determination by the Federal land manager that certain remains, are not, or are no longer, archaeological resources. Two (2) copies of the request should be sent to the Departmental Consulting Archeologist, National Park Service, P.O. Box 37127, Washington, DC 20013-7127, and should document why the requestor disagrees with the determination of the Federal land manager. The Departmental Consulting Archeologist shall review the request, and, if appropriate, shall review the Federal land manager's determination and its
supporting documentation. Based on this review, the Departmental Consulting
Archaeologist shall prepare a final professional recommendation, and shall transmit
the recommendation and the basis therefore to the head of the bureau for further
consideration within 60 days of the receipt of the request.

(g) Any determination made pursuant to this section shall in no way affect the
Federal land manager's obligations under other applicable laws or regulations.

Sec. 7.34 Procedural information for securing permits.
Information about procedures to secure a permit to excavate or remove
archaeological resources from public lands or Indian lands can be obtained from the
appropriate Indian tribal authorities, the Federal land manager of the bureau that
administers the specific area of the public lands or Indian lands for which a
permit is desired, or from the state, regional, or national office of that bureau.

Sec. 7.35 Permitting procedures for Indian lands.
(a) If the lands involved in a permit application are Indian lands, the consent
of the appropriate Indian tribal authority or individual Indian landowner is
required by the Act and these regulations.
(b) When Indian tribal lands are involved in an application for a permit or a
request for extension or modification of a permit, the consent of the Indian tribal
government must be obtained. For Indian allotted lands outside reservation
boundaries, consent from only the individual landowner is needed. When multiple-
owner allotted lands are involved, consent by more than 50 percent of the ownership
interest is sufficient. For Indian allotted lands within reservation boundaries,
consent must be obtained from the Indian tribal government and the individual
landowner(s).
(c) The applicant should consult with the Bureau of Indian Affairs concerning
procedures for obtaining consent from the appropriate Indian tribal authorities and
submit the permit application to the area office of the Bureau of Indian Affairs
that is responsible for the administration of the lands in question. The Bureau
of Indian Affairs shall insure that consultation with the appropriate Indian tribal
authority or individual Indian landowner regarding terms and conditions of the
permit occurs prior to detailed evaluation of the application. Permits shall
include terms and conditions requested by the Indian tribe or Indian landowner
pursuant to Sec. 7.9 of this part.
(d) The issuance of a permit under this part does not remove the requirement
for any other permit required by Indian tribal law.

Sec. 7.36 Permit reviews and disputes.
(a) Any affected person disputing the decision of a Federal land manager with
respect to the issuance or denial of a permit, the inclusion of specific terms and
conditions in a permit, or the modification, suspension, or revocation of a permit
may request the Federal land manager to review the disputed decision and may
request a conference to discuss the decision and its basis.
(b) The disputant, if unsatisfied with the outcome of the review or conference,
may request that the decision be reviewed by the head of the bureau involved.
(c) Any disputant unsatisfied with the higher level review, and desiring to
appeal the decision, pursuant to Sec. 7.11 of this part, should consult with the
appropriate Federal land manager regarding the existence of published bureau appeal
procedures. In the absence of published bureau appeal procedures, the review by the
head of the bureau involved will constitute the final decision.
(d) Any affected person may request a review by the Departmental Consulting
Archaeologist of any professional issues involved in a bureau permitting decision,
such as professional qualifications, research design, or other professional
archaeological matters. The Departmental Consulting Archaeologist shall make a final
professional recommendation to the head of the bureau involved. The head of the
bureau involved will consider the recommendation, but may reject it, in whole or in
part, for good cause. This request should be in writing, and should state the reasons for the request. See Sec. 7.33(f) for the address of the Departmental Consulting Archeologist.

Sec. 7.37 Civil penalty hearings procedures.

(a) Requests for hearings. Any person wishing to request a hearing on a notice of assessment of civil penalty, pursuant to Sec. 7.15(g) of this part, may file a written, dated request for a hearing with the Hearing Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203-1923. The respondent shall enclose a copy of the notice of violation and the notice of assessment. The request shall state the relief sought, the basis for challenging the facts used as the basis for charging the violation and fixing the assessment, and respondent's preference as to the place and date for a hearing. A copy of the request shall be served upon the Solicitor of the Department of the Interior personally or by registered or certified mail (return receipt requested), at the address specified in the notice of assessment. Hearings shall be conducted in accordance with 43 CFR part 4, subparts A and B.

(b) Waiver of right to a hearing. Failure to file a written request for a hearing within 45 days of the date of service of a notice of assessment shall be deemed a waiver of the right to a hearing.

(c) Commencement of hearing procedures. Upon receipt of a request for a hearing, the Hearing Division shall assign an administrative law judge to the case. Notice of assignment shall be given promptly to the parties, and thereafter, all pleadings, papers, and other documents in the proceeding shall be filed directly with the administrative law judge, with copies served on the opposing party.

(d) Appearance and practice. (1) Subject to the provisions of 43 CFR 1.3, the respondent may appear in person, by representative, or by counsel, and may participate fully in those proceedings. If respondent fails to appear and the administrative law judge determines such failure is without good cause, the administrative law judge may, in his/her discretion, determine that such failure shall constitute a waiver of the right to a hearing and consent to the making of a decision on the record made at the hearing.

(2) Departmental counsel, designated by the Solicitor of the Department, shall represent the Federal land manager in the proceedings. Upon notice to the Federal land manager of the assignment of an administrative law judge to the case, said counsel shall enter his/her appearance on behalf of the Federal land manager and shall file all petitions and correspondence exchanges by the Federal land manager and the respondent pursuant to Sec. 7.15 of this part which shall become part of the hearing record. Thereafter, service upon the Federal land manager shall be made to his/her counsel.

(e) Hearing administration. (1) The administrative law judge shall have all powers accorded by law and necessary to preside over the parties and the proceedings and to make decisions in accordance with 5 U.S.C. 554-557.

(2) The transcript of testimony, the exhibits, and all papers, documents and requests filed in the proceedings, shall constitute the record for decision. The administrative law judge shall render a written decision upon the record, which shall set forth his/her findings of fact and conclusions of law, and the reasons and basis therefore, and an assessment of a penalty, if any.

(3) Unless a notice of appeal is filed in accordance with paragraph (f) of this section, the administrative law judge's decision shall constitute the final administrative determination of the Secretary in the matter and shall become effective 30 calendar days from the date of this decision.

(4) In any such hearing, the amount of civil penalty assessed shall be determined in accordance with this part, and shall not be limited by the amount assessed by the Federal land manager under Sec. 7.15 of this part or any offer of mitigation or remission made by the Federal land manager.

(f) Appeal. (1) Either the respondent or the Federal land manager may appeal
the decision of an administrative law judge by the filing of a "Notice of Appeal" with the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203-1923, within 30 calendar days of the date of the administrative law judge's decision. Such notice shall be accompanied by proof of service on the administrative law judge and the opposing party.

(2) Upon receipt of such a notice, the Director, Office of Hearings and Appeals, shall appoint an ad hoc appeals board to hear and decide an appeal. To the extent they are not inconsistent herewith, the provision of the Department of Hearings and Appeals Procedures in 43 CFR part 4, subparts A, B, and G shall apply to appeal proceedings under this subpart. The decision of the board on the appeal shall be in writing and shall become effective as the final administrative determination of the Secretary in the proceeding on the date it is rendered, unless otherwise specified therein.

(g) Report service. Copies of decisions in civil penalty proceedings instituted under the Act may be obtained by letter of request addressed to the Director, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203-1923. Fees for this service shall be as established by the Director of that Office.

[Code of Federal Regulations, Title 43, Volume 1, Parts 1 to 999]
[Revised as of October 1, 1997]
Native American Graves Protection and Repatriation Act
AS AMENDED

This Act became law on November 16, 1990 (Public Law 101-601; 25 U.S.C. 3001 et seq.) and has been amended twice. This description of the Act, as amended, tracks the language of the United States Code except that (following common usage) we refer to the "Act" (meaning the Act, as amended) rather than to the "subchapter" or the "title" of the Code.

25 U.S.C. 3001, Definitions

Section 2

For purposes of this Act, the term—

(1) "burial site" means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(2) "cultural affiliation" means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

(3) "cultural items" means human remains and—

(A) "associated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.

(B) "unassociated funerary objects" which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,
(C) "sacred objects" which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(D) "cultural patrimony" which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

(4) "Federal agency" means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution.

(5) "Federal lands" means any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.].

(6) "Hui Malama I Na Kupuna O Hawai'i Nei" means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii by that name on April 17, 1989, for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

(7) "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
Native American Graves Protection and Repatriation Act

(8) "museum" means any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.

(9) "Native American" means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

(10) "Native Hawaiian" means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(11) "Native Hawaiian organization" means any organization which—

(A) serves and represents the interests of Native Hawaiians,

(B) has as a primary and stated purpose the provision of services to Native Hawaiians, and

(C) has expertise in Native Hawaiian Affairs, and shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai‘i Nei.

(12) "Office of Hawaiian Affairs" means the Office of Hawaiian Affairs established by the constitution of the State of Hawaii.

(13) "right of possession" means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in section 7(c) of this Act [25 U.S.C. 3005(c)], result in a Fifth Amendment taking by the United States as determined by the United States Court of Federal Claims pursuant to
3.56

Native American Graves Protection and Repatriation Act

28 U.S.C. 1491 in which event the "right of possession" shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

(14) "Secretary" means the Secretary of the Interior.

(15) "tribal land" means—

(A) all lands within the exterior boundaries of any Indian reservation;

(B) all dependent Indian communities;

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920 [42 Stat. 108], and section 4 of Public Law 86-3 [note preceding 48 U.S.C. 491].

Section 3

(a) The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after November 16, 1990, shall be (with priority given in the order listed)—

(i) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(ii) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony—

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or
(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe—

(i) [sic] in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(ii) [sic] if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (i), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

(b) Native American cultural items not claimed under subsection (a) of this section shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 8 of this Act [25 U.S.C. 3006], Native American groups, representatives of museums and the scientific community.

(c) The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if—

(i) such items are excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979, as amended, [16 U.S.C. 470cc] which shall be consistent with this Act;

(ii) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(iii) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b) of this section; and

(iv) proof of consultation or consent under paragraph (2) is shown.
(d)(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after November 16, 1990, shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.], the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.

(2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section.

(3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary with respect to any land managed by such other Secretary or agency head.

(e) Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object.
Native American Graves Protection and Repatriation Act

Section 4
(a) Chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new section:

Section 1170
“(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.”

“(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both.”

(b) The table of contents for chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new item:

“1170, Illegal Trafficking in Native American Human Remains and Cultural Items.”

Section 5
(a) Each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and, to the extent possible based on information possessed by such museum or Federal agency, identify the geographical and cultural affiliation of such item.

(b)(i) The inventories and identifications required under subsection (a) of this section shall be—
Native American Graves Protection and Repatriation Act

(A) completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders;

(B) completed by not later than the date that is 5 years after November 16, 1990, [the date of enactment of this Act], and

(C) made available both during the time they are being conducted and afterward to a review committee established under section 8 of this Act [25 U.S.C. 3006].

(2) Upon request by an Indian tribe or Native Hawaiian organization which receives or should have received notice, a museum or Federal agency shall supply additional available documentation to supplement the information required by subsection (a) of this section. The term "documentation" means a summary of existing museum or Federal agency records, including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American human remains and associated funerary objects subject to this section. Such term does not mean, and this Act shall not be construed to be an authorization for, the initiation of new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.

(c) Any museum which has made a good faith effort to carry out an inventory and identification under this section, but which has been unable to complete the process, may appeal to the Secretary for an extension of the time requirements set forth in subsection (b)(1)(B) of this section. The Secretary may extend such time requirements for any such museum upon a finding of good faith effort. An indication of good faith shall include the development of a plan to carry out the inventory and identification process.

(d)(1) If the cultural affiliation of any particular Native American human remains or associated funerary objects is determined pursuant to this section, the Federal agency or museum concerned shall, not later than 6 months after the completion of the inventory, notify the affected Indian tribes or Native Hawaiian organizations.
Native American Graves Protection and Repatriation Act

(2) The notice required by paragraph (1) shall include information—

(A) which identifies each Native American human remains or associated funerary objects and the circumstances surrounding its acquisition;

(B) which lists the human remains or associated funerary objects that are clearly identifiable as to tribal origin; and

(C) which lists the Native American human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with that Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains or objects culturally affiliated with the Indian tribe or Native Hawaiian organization.

(3) A copy of each notice provided under paragraph (1) shall be sent to the Secretary who shall publish each notice in the Federal Register.

(c) For the purposes of this section, the term “inventory” means a simple itemized list that summarizes the information called for by this section.

Section 6

(a) Each Federal agency or museum which has possession or control over holdings or collections of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written summary of such objects based upon available information held by such agency or museum. The summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable.

(b)(1) The summary required under subsection (a) of this section shall be—

(A) in lieu of an object-by-object inventory;

(B) followed by consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders; and
Native American Graves Protection and Repatriation Act

(C) completed by not later than the date that is 3 years after November 16, 1990, [the date of enactment of this Act].

(2) Upon request, Indian Tribes and Native Hawaiian organizations shall have access to records, catalogues, relevant studies or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American objects subject to this section. Such information shall be provided in a reasonable manner to be agreed upon by all parties.

Section 7

(a)(1) If, pursuant to section 5 of this Act [25 U.S.C. 3003], the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e) of this section, shall expeditiously return such remains and associated funerary objects.

(2) If, pursuant to section 6 of this Act [25 U.S.C. 3004], the cultural affiliation with a particular Indian tribe or Native Hawaiian organization is shown with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then the Federal agency or museum, upon the request of the Indian tribe or Native Hawaiian organization and pursuant to subsections (b), (c) and (e) of this section, shall expeditiously return such objects.

(3) The return of cultural items covered by this Act shall be in consultation with the requesting lineal descendant or tribe or organization to determine the place and manner of delivery of such items.
Native American Graves Protection and Repatriation Act

(4) Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory prepared pursuant to section 5 of this Act [25 U.S.C. 3003], or the summary pursuant to section 6 of this Act [25 U.S.C. 3004], or where Native American human remains and funerary objects are not included upon any such inventory, then, upon request and pursuant to subsections (b) and (e) of this section and, in the case of unassociated funerary objects, subsection (c) of this section, such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.

(5) Upon request and pursuant to subsections (b), (c) and (e) of this section, sacred objects and objects of cultural patrimony shall be expeditiously returned where—

(A) the requesting party is the direct lineal descendant of an individual who owned the sacred object;

(B) the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by the tribe or organization; or

(C) the requesting Indian tribe or Native Hawaiian organization can show that the sacred object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no identifiable lineal descendants of said member or the lineal descendents, upon notice, have failed to make a claim for the object under this Act.

25 U.S.C. 3005(b), Scientific study

(b) If the lineal descendant, Indian tribe, or Native Hawaiian organization requests the return of culturally affiliated Native American cultural items, the Federal agency or museum shall expeditiously return such items unless such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned by no later than 90 days after the date on which the scientific study is completed.
(c) If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony pursuant to this Act and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects.

(d) Any Federal agency or museum shall share what information it does possess regarding the object in question with the known lineal descendant, Indian tribe, or Native Hawaiian organization to assist in making a claim under this section.

(e) Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this Act, the Federal agency or museum cannot clearly determine which requesting party is the most appropriate claimant, the agency or museum may retain such item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this Act or by a court of competent jurisdiction.

(f) Any museum which repatriates any item in good faith pursuant to this Act shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state law that are inconsistent with the provisions of this Act.

Section 8

(a) Within 120 days after November 16, 1990, the Secretary shall establish a committee to monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 5, 6 and 7 of this Act [25 U.S.C. 3003, 3004, and 3005].
Native American Graves Protection and Repatriation Act

(b)(1) The Committee established under subsection (a) of this section shall be composed of 7 members,

(A) 3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional Indian religious leaders;

(B) 3 of whom shall be appointed by the Secretary from nominations submitted by national museum organizations and scientific organizations; and

(C) 1 who shall be appointed by the Secretary from a list of persons developed and consented to by all of the members appointed pursuant to subparagraphs (A) and (B).

(2) The Secretary may not appoint Federal officers or employees to the committee.

(3) In the event vacancies shall occur, such vacancies shall be filled by the Secretary in the same manner as the original appointment within 90 days of the occurrence of such vacancy.

(4) Members of the committee established under subsection (a) of this section shall serve without pay, but shall be reimbursed at a rate equal to the daily rate for GS-18 of the General Schedule for each day (including travel time) for which the member is actually engaged in committee business. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5 [United States Code].

(c) The committee established under subsection a) of this section shall be responsible for—

(i) designating one of the members of the committee as chairman;

(ii) monitoring the inventory and identification process conducted under sections 5 and 6 of this Act [25 U.S.C. 3003 and 3004] to ensure a fair, objective consideration and assessment of all available relevant information and evidence;

(iii) upon the request of any affected party, reviewing and making findings related to—
Native American Graves Protection and Repatriation Act

(A) the identity or cultural affiliation of cultural items, or

(B) the return of such items;

(4) facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;

(5) compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;

(6) consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;

(7) consulting with the Secretary in the development of regulations to carry out this Act;

(8) performing such other related functions as the Secretary may assign to the committee; and

(9) making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated.

Any records and findings made by the review committee pursuant to this Act relating to the identity or cultural affiliation of any cultural items and the return of such items may be admissible in any action brought under section 15 of this Act [25 U.S.C. 3013].

The committee shall make the recommendations under paragraph (c)(5) of this section in consultation with Indian tribes and Native Hawaiian organizations and appropriate scientific and museum groups.

The Secretary shall ensure that the committee established under subsection (a) of this section and the members of the committee have reasonable access to Native American cultural items under review and to associated scientific and historical documents.
Native American Graves Protection and Repatriation Act

25 U.S.C. 3006(g), Duties of the Secretary, regulations, and administrative support

(g) The Secretary shall—

(1) establish such rules and regulations for the committee as may be necessary, and

(2) provide reasonable administrative and staff support necessary for the deliberations of the committee.

25 U.S.C. 3006(h), Annual report to Congress

(h) The committee established under subsection (a) of this section shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

25 U.S.C. 3006(i), Committee termination

(i) The committee established under subsection (a) of this section shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the committee has been completed.

Section 9

25 U.S.C. 3007, Penalty assessment, museums

(a) Any museum that fails to comply with the requirements of this Act may be assessed a civil penalty by the Secretary of the Interior pursuant to procedures established by the Secretary through regulation. A penalty assessed under this subsection shall be determined on the record after opportunity for an agency hearing. Each violation under this subsection shall be a separate offense.

25 U.S.C. 3007(b), Amount of penalty

(b) The amount of a penalty assessed under subsection (a) of this section shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(1) the archaeological, historical, or commercial value of the item involved;

(2) the damages suffered, both economic and noneconomic, by an aggrieved party, and

(3) the number of violations that have occurred.
(c) If any museum fails to pay an assessment of a civil penalty pursuant to a final order of the Secretary that has been issued under subsection (a) of this section and not appealed or after a final judgment has been rendered on appeal of such order, the Attorney General may institute a civil action in an appropriate district court of the United States to collect the penalty. In such action, the validity and amount of such penalty shall not be subject to review.

(d) In hearings held pursuant to subsection (a) of this section, subpoenas may be issued for the attendance and testimony of witnesses and the production of relevant papers, books, and documents. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

Section 10

(a) The Secretary is authorized to make grants to Indian tribes and Native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of Native American cultural items.

(b) The Secretary is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 5 and 6 of this Act [25 U.S.C. 3003 and 3004].

Section 11

Nothing in this Act shall be construed to:

(i) limit the authority of any Federal agency or museum to—

(A) return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations, or individuals, and

(B) enter into any other agreement with the consent of the culturally affiliated tribe or organization as to the disposition of, or control over, items covered by this Act;

(ii) delay actions on repatriation requests that are pending on November 16, 1990;

(iii) deny or otherwise affect access to any court;
Native American Graves Protection and Repatriation Act

(4) limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or

(5) limit the application of any State or Federal law pertaining to theft or stolen property.

Section 12

This Act reflects the unique relationship between the Federal Government and Indian tribes and Native Hawaiian organizations and should not be construed to establish a precedent with respect to any other individual, organization or foreign government.

Section 13

The Secretary shall promulgate regulations to carry out this Act within 12 months of November 16, 1990.

Section 14

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

Section 15

The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act.
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT
- Final Rule 43 CFR 10

Dated October 1, 2003

[Code of Federal Regulations] [Title 43, Volume 1] [Revised as of October 1, 2003]

TITLE 43—PUBLIC LANDS: INTERIOR
PART 10—NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REGULATIONS

Subpart A--Introduction
10.1 Purpose and applicability.
10.2 Definitions

Subpart B--Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural
Patrimony From Federal or Tribal Lands
10.3 Intentional archaeological excavations.
10.4 Inadvertent discoveries.
10.5 Consultation.
10.6 Custody.
10.7 Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of
cultural patrimony. [Reserved]

Subpart C--Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural
Patrimony in Museums and Federal Collections
10.8 Summaries.
10.9 Inventories.
10.10 Repatriation.
10.11 Disposition of culturally unidentifiable human remains. [Reserved]
10.12 Civil penalties.
10.13 Future applicability. [Reserved]

Subpart D--General
10.14 Lineal descent and cultural affiliation.
10.15 Limitations and remedies.
10.16 Review committee.
10.17 Dispute resolution.

Appendix A to Part 10--Sample Summary
Appendix B to Part 10--Sample Notice of Inventory Completion.

Authority: 25 U.S.C. 3001 et seq.
Source: 60 FR 62158, Dec. 4, 1995, unless otherwise noted.
Subpart A--Introduction

Sec. 10.1 Purpose and applicability.

(a) Purpose. These regulations carry out provisions of the Native American Graves Protection and Repatriation Act of 1990 (Pub.L. 101-601; 25 U.S.C. 3001-3013; 104 Stat. 3048-3058). These regulations develop a systematic process for determining the rights of lineal descendants and Indian tribes and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated.

(b) Applicability. (1) These regulations pertain to the identification and appropriate disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are:
(i) In Federal possession or control; or
(ii) In the possession or control of any institution or State or local government receiving Federal funds; or
(iii) Excavated intentionally or discovered inadvertently on Federal or tribal lands.
(2) These regulations apply to human remains, funerary objects, sacred objects, or objects of cultural patrimony which are indigenous to Alaska, Hawaii, and the continental United States, but not to territories of the United States.
(3) Throughout these regulations are decision points which determine their applicability in particular circumstances, e.g., a decision as to whether a museum "controls" human remains and cultural objects within the meaning of the regulations, or, a decision as to whether an object is a "human remain," "funerary object," "sacred object," or "object of cultural patrimony" within the meaning of the regulations. Any final determination making the Act or these regulations inapplicable is subject to review pursuant to section 15 of the Act.

Sec. 10.2 Definitions.

In addition to the term Act, which means the Native American Graves Protection and Repatriation Act as described above, definitions used in these regulations are grouped in seven classes: Parties required to comply with these regulations; Parties with standing to make claims under these regulations; Parties responsible for implementing these regulations; Objects covered by these regulations; Cultural affiliation; Types of land covered by these regulations; and Procedures required by these regulations.

(a) Who must comply with these regulations?
(1) Federal agency means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution as specified in section 2 (4) of the Act.
(2) Federal agency official means any individual authorized by delegation of authority within a Federal agency to perform the duties relating to these regulations.
(3) Museum means any institution or State or local government agency (including any institution of higher learning) that has possession of, or control over, human remains, funerary objects, sacred objects, or objects of cultural patrimony and receives Federal funds.
(i) The term "possession" means having physical custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony with a sufficient legal interest to lawfully treat the
objects as part of its collection for purposes of these regulations. Generally, a museum or Federal agency would not be considered to have possession of human remains, funerary objects, sacred objects, or objects of cultural patrimony on loan from another individual, museum, or Federal agency.

(ii) The term ``control'' means having a legal interest in human remains, funerary objects, sacred objects, or objects of cultural patrimony sufficient to lawfully permit the museum or Federal agency to treat the objects as part of its collection for purposes of these regulations whether or not the human remains, funerary objects, sacred objects or objects of cultural patrimony are in the physical custody of the museum or Federal agency. Generally, a museum or Federal agency that has loaned human remains, funerary objects, sacred objects, or objects of cultural patrimony to another individual, museum, or Federal agency is considered to retain control of those human remains, funerary objects, sacred objects, or objects of cultural patrimony for purposes of these regulations.

(iii) The phrase ``receives Federal funds'' means the receipt of funds by a museum after November 16, 1990, from a Federal agency through any grant, loan, contract (other than a procurement contract), or other arrangement by which a Federal agency makes or made available to a museum aid in the form of funds. Federal funds provided for any purpose that are received by a larger entity of which the museum is a part are considered Federal funds for the purposes of these regulations. For example, if a museum is a part of a State or local government or a private university and the State or local government or private university receives Federal funds for any purpose, the museum is considered to receive Federal funds for the purpose of these regulations.

(4) Museum official means the individual within a museum designated as being responsible for matters relating to these regulations.

(5) Person means an individual, partnership, corporation, trust, institution, association, or any other private entity, or, any official, employee, agent, department, or instrumentality of the United States, or of any Indian tribe or Native Hawaiian organization, or of any State or political subdivision thereof that discovers or discovered human remains, funerary objects, sacred objects or objects of cultural patrimony on Federal or tribal lands after November 16, 1990.

(b) **Who has standing to make a claim under these regulations?**

(1) Lineal descendant means an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descendance to a known Native American individual whose remains, funerary objects, or sacred objects are being claimed under these regulations.

(2) Indian tribe means any tribe, band, nation, or other organized Indian group or community of Indians, including any Alaska Native village or corporation as defined in or established by the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The Secretary will distribute a list of Indian tribes for the purposes of carrying out this statute through the Departmental Consulting Archeologist.

(3)(i) Native Hawaiian organization means any organization that:

(A) Serves and represents the interests of Native Hawaiians;

(B) Has as a primary and stated purpose the provision of services to Native Hawaiians; and

(C) Has expertise in Native Hawaiian affairs.

(ii) The term Native Hawaiian means any individual who is a descendant of the aboriginal people
who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii. Such organizations must include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna 'O Hawai'i Nei.

(4) Indian tribe official means the principal leader of an Indian tribe or Native Hawaiian organization or the individual officially designated by the governing body of an Indian tribe or Native Hawaiian organization or as otherwise provided by tribal code, policy, or established procedure as responsible for matters relating to these regulations.

(c) Who is responsible for carrying out these regulations?

(1) Secretary means the Secretary of the Interior.

(2) Review Committee means the advisory committee established pursuant to section 8 of the Act.

(3) Departmental Consulting Archeologist means the official of the Department of the Interior designated by the Secretary as responsible for the administration of matters relating to these regulations.

Communications to the Departmental Consulting Archeologist should be addressed to:
Departmental Consulting Archeologist National Park Service, PO Box 37127, Washington, DC 20013-7127.

(d) What objects are covered by these regulations? The Act covers four types of Native American objects. The term Native American means, or relating to, a tribe, people, or culture indigenous to the United States, including Alaska and Hawaii.

(1) Human remains means the physical remains of the body of a person of Native American ancestry. The term does not include remains or portions of remains that may reasonably be determined to have been freely given or naturally shed by the individual from whose body they were obtained, such as hair made into ropes or nets. For the purposes of determining cultural affiliation, human remains incorporated into a funerary object, sacred object, or object of cultural patrimony, as defined below, must be considered as part of that item.

(2) Funerary objects means items that, as part of the death rite or ceremony of a culture, are reasonably believed to have been placed intentionally at the time of death or later with or near individual human remains. Funerary objects must be identified by a preponderance of the evidence as having been removed from a specific burial site of an individual affiliated with a particular Indian tribe or Native Hawaiian organization or as being related to specific individuals or families or to known human remains. The term burial site means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which, as part of the death rite or ceremony of a culture, individual human remains were deposited, and includes rock cairns or pyres which do not fall within the ordinary definition of gravesite. For purposes of completing the summary requirements in Sec. 10.8 and the inventory requirements of Sec. 10.9:

(i) Associated funerary objects means those funerary objects for which the human remains with which they were placed intentionally are also in the possession or control of a museum or Federal agency.

Associated funerary objects also means those funerary objects that were made exclusively for burial purposes or to contain human remains.

(ii) Unassociated funerary objects means those funerary objects for which the human remains with which they were placed intentionally are not in the possession or control of a museum or Federal agency. Objects that were displayed with individual human remains as part of a death rite or ceremony of a culture and subsequently returned or distributed according to traditional custom to
living descendants or other individuals are not considered unassociated funerary objects.

(3) Sacred objects means items that are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. While many items, from ancient pottery sherds to arrowheads, might be imbued with sacredness in the eyes of an individual, these regulations are specifically limited to objects that were devoted to a traditional Native American religious ceremony or ritual and which have religious significance or function in the continued observance or renewal of such ceremony. The term traditional religious leader means a person who is recognized by members of an Indian tribe or Native Hawaiian organization as:

(i) Being responsible for performing cultural duties relating to the ceremonial or religious traditions of that Indian tribe or Native Hawaiian organization, or

(ii) Exercising a leadership role in an Indian tribe or Native Hawaiian organization based on the tribe or organization's cultural, ceremonial, or religious practices.

(4) Objects of cultural patrimony means items having ongoing historical, traditional, or cultural importance central to the Indian tribe or Native Hawaiian organization itself, rather than property owned by an individual tribal or organization member. These objects are of such central importance that they may not be alienated, appropriated, or conveyed by any individual tribal or organization member. Such objects must have been considered inalienable by the culturally affiliated Indian tribe or Native Hawaiian organization at the time the object was separated from the group. Objects of cultural patrimony include items such as Zuni War Gods, the Confederacy Wampum Belts of the Iroquois, and other objects of similar character and significance to the Indian tribe or Native Hawaiian organization as a whole.

(c) What is cultural affiliation? Cultural affiliation means that there is a relationship of shared group identity which can reasonably be traced historically or prehistorically between members of a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. Cultural affiliation is established when the preponderance of the evidence -- based on geographical, kinship, biological, archeological, linguistic, folklore, oral tradition, historical evidence, or other information or expert opinion -- reasonably leads to such a conclusion.

(f) What types of lands do the excavation and discovery provisions of these regulations apply to? (1) Federal lands means any land other than tribal lands that are controlled or owned by the United States Government, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.). United States "control," as used in this definition, refers to those lands not owned by the United States but in which the United States has a legal interest sufficient to permit it to apply these regulations without abrogating the otherwise existing legal rights of a person.

(2) Tribal lands means all lands which:

(i) Are within the exterior boundaries of any Indian reservation including, but not limited to, allotments held in trust or subject to a restriction on alienation by the United States; or

(ii) Comprise dependent Indian communities as recognized pursuant to 18 U.S.C. 1151; or

(iii) Are administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act of 1920 and section 4 of the Hawaiian Statehood Admission Act (Pub.L. 86-3; 73 Stat. 6).

(iv) Actions authorized or required under these regulations will not apply to tribal lands to the extent that any action would result in a taking of property without compensation within the
meaning of the Fifth Amendment of the United States Constitution.

(g) **What procedures are required by these regulations?**

(1) **Summary** means the written description of collections that may contain unassociated funerary objects, sacred objects, and objects of cultural patrimony required by Sec. 10.8 of these regulations.

(2) **Inventory** means the item-by-item description of human remains and associated funerary objects.

(3) **Intentional excavation** means the planned archeological removal of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to section 3(c) of the Act.

(4) **Inadvertent discovery** means the unanticipated encounter or detection of human remains, funerary objects, sacred objects, or objects of cultural patrimony found under or on the surface of Federal or tribal lands pursuant to section 3(d) of the Act.


**Subpart B—Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony From Federal or Tribal Lands**

**Sec. 10.3 Intentional archaeological excavations.**

(a) **General.** This section carries out section 3(c) of the Act regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are excavated intentionally from Federal or tribal lands after November 16, 1990.

(b) **Specific Requirements.** These regulations permit the intentional excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal or tribal lands only if:

(1) The objects are excavated or removed following the requirements of the Archaeological Resources Protection Act (ARPA) (16 U.S.C. 470aa et seq.) and its implementing regulations. Regarding private lands within the exterior boundaries of any Indian reservation, the Bureau of Indian Affairs (BIA) will serve as the issuing agency for any permits required under the Act. For BIA procedures for obtaining such permits, see 25 CFR part 262 or contact the Deputy Commissioner of Indian Affairs, Department of the Interior, Washington, DC 20240. Regarding lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Pub. L. 86-3, the Department of Hawaiian Home Lands will serve as the issuing agency for any permits required under the Act, with the Hawaii State Historic Preservation Division of the Department of Land and Natural Resources acting in an advisory capacity for such issuance. Procedures and requirements for issuing permits will be consistent with those required by the ARPA and its implementing regulations;

(2) The objects are excavated after consultation with or, in the case of tribal lands, consent of, the appropriate Indian tribe or Native Hawaiian organization pursuant to Sec. 10.5;

(3) The disposition of the objects is consistent with their custody as described in Sec. 10.6; and

(4) Proof of the consultation or consent is shown to the Federal agency official or other agency official responsible for the issuance of the required permit.
(c) Procedures. (1) The Federal agency official must take reasonable steps to determine whether a planned activity may result in the excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony from Federal lands. Prior to issuing any approvals or permits for activities, the Federal agency official must notify in writing the Indian tribes or Native Hawaiian organizations that are likely to be culturally affiliated with any human remains, funerary objects, sacred objects, or objects of cultural patrimony that may be excavated. The Federal agency official must also notify any present-day Indian tribe which aboriginally occupied the area of the planned activity and any other Indian tribes or Native Hawaiian organizations that the Federal agency official reasonably believes are likely to have a cultural relationship to the human remains, funerary objects, sacred objects, or objects of cultural patrimony that are expected to be found. The notice must be in writing and describe the planned activity, its general location, the basis upon which it was determined that human remains, funerary objects, sacred objects, or objects of cultural patrimony may be excavated, and, the basis for determining likely custody pursuant to Sec. 10.6. The notice must also propose a time and place for meetings or consultations to further consider the activity, the Federal agency's proposed treatment of any human remains, funerary objects, sacred objects, or objects of cultural patrimony that may be excavated, and the proposed disposition of any excavated human remains, funerary objects, sacred objects, or objects of cultural patrimony. Written notification should be followed up by telephone contact if there is no response in 15 days. Consultation must be conducted pursuant to Sec. 10.5.

(2) Following consultation, the Federal agency official must complete a written plan of action (described in Sec. 10.5(c)) and execute the actions called for in it.

(3) If the planned activity is also subject to review under section 106 of the National Historic Preservation Act (16 U.S.C. 470 et seq.), the Federal agency official should coordinate consultation and any subsequent agreement for compliance conducted under that Act with the requirements of Sec. 10.3 (c)(2) and Sec. 10.5. Compliance with these regulations does not relieve Federal agency officials of requirements to comply with section 106 of the National Historic Preservation Act (16 U.S.C. 470 et seq.).

(4) If an Indian tribe or Native Hawaiian organization receives notice of a planned activity or otherwise becomes aware of a planned activity that may result in the excavation of human remains, funerary objects, sacred objects, or objects of cultural patrimony on tribal lands, the Indian tribe or Native Hawaiian organization may take appropriate steps to:

(i) Ensure that the human remains, funerary objects, sacred objects, or objects of cultural patrimony are excavated or removed following Sec. 10.3 (b), and

(ii) Make certain that the disposition of any human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently as a result of the planned activity are carried out following Sec. 10.6.

Sec. 10.4 Inadvertent discoveries.

(a) General. This section carries out section 3 (d) of the Act regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony that are discovered inadvertently on Federal or tribal lands after November 16, 1990.

(b) Discovery. Any person who knows or has reason to know that he or she has discovered
inadvertently human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal or tribal lands after November 16, 1990, must provide immediate telephone notification of the inadvertent discovery, with written confirmation, to the responsible Federal agency official with respect to Federal lands, and, with respect to tribal lands, to the responsible Indian tribe official. The requirements of these regulations regarding inadvertent discoveries apply whether or not an inadvertent discovery is duly reported. If written confirmation is provided by certified mail, the return receipt constitutes evidence of the receipt of the written notification by the Federal agency official or Indian tribe official.

(c) **Ceasing activity.** If the inadvertent discovery occurred in connection with an on-going activity on Federal or tribal lands, the person, in addition to providing the notice described above, must stop the activity in the area of the inadvertent discovery and make a reasonable effort to protect the human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently.

(d) **Federal lands.** (1) As soon as possible, but no later than three (3) working days after receipt of the written confirmation of notification with respect to Federal lands described in Sec. 10.4 (b), the responsible Federal agency official must:

(i) Certify receipt of the notification;
(ii) Take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony, including, as appropriate, stabilization or covering;
(iii) Notify by telephone, with written confirmation, the Indian tribes or Native Hawaiian organizations likely to be culturally affiliated with the inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony, the Indian tribe or Native Hawaiian organization which aboriginally occupied the area, and any other Indian tribe or Native Hawaiian organization that is reasonably known to have a cultural relationship to the human remains, funerary objects, sacred objects, or objects of cultural patrimony. This notification must include pertinent information as to kinds of human remains, funerary objects, sacred objects, or objects of cultural patrimony discovered inadvertently, their condition, and the circumstances of their inadvertent discovery;
(iv) Initiate consultation on the inadvertent discovery pursuant to Sec. 10.5;
(v) If the human remains, funerary objects, sacred objects, or objects of cultural patrimony must be excavated or removed, follow the requirements and procedures in Sec. 10.3 (b) of these regulations; and
(vi) Ensure that disposition of all inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony is carried out following Sec. 10.6.

(2) **Resumption of activity.** The activity that resulted in the inadvertent discovery may resume thirty (30) days after certification by the notified Federal agency of receipt of the written confirmation of notification of inadvertent discovery if the resumption of the activity is otherwise lawful. The activity may also resume, if otherwise lawful, at any time that a written, binding agreement is executed between the Federal agency and the affiliated Indian tribes or Native Hawaiian organizations that adopt a recovery plan for the excavation or removal of the human remains, funerary objects, sacred objects, or objects of cultural patrimony following Sec. 10.3 (b)(1) of these regulations. The disposition of all human remains, funerary objects, sacred objects,
or objects of cultural patrimony must be carried out following Sec. 10.6.

(e) **Tribal lands.** (1) As soon as possible, but no later than three (3) working days after receipt of the written confirmation of notification with respect to Tribal lands described in Sec. 10.4 (b), the responsible Indian tribe official may:
   (i) Certify receipt of the notification;
   (ii) Take immediate steps, if necessary, to further secure and protect inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony, including, as appropriate, stabilization or covering;
   (iii) If the human remains, funerary objects, sacred objects, or objects of cultural patrimony must be excavated or removed, follow the requirements and procedures in Sec. 10.3 (b) of these regulations; and
   (iv) Ensure that disposition of all inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony is carried out following Sec. 10.6.

(2) Resumption of Activity. The activity that resulted in the inadvertent discovery may resume if otherwise lawful after thirty (30) days of the certification of the receipt of notification by the Indian tribe or Native Hawaiian organization.

(f) **Federal agency officials.** Federal agency officials should coordinate their responsibilities under this section with their emergency discovery responsibilities under section 106 of the National Historical Preservation Act (16 U.S.C. 470 (f) et seq.), 36 CFR 800.11 or section 3 (a) of the Archeological and Historic Preservation Act (16 U.S.C. 469 (a-c)). Compliance with these regulations does not relieve Federal agency officials of the requirement to comply with section 106 of the National Historical Preservation Act (16 U.S.C. 470 (f) et seq.), 36 CFR 800.11 or section 3 (a) of the Archeological and Historic Preservation Act (16 U.S.C. 469 (a-c)).

(g) **Notification requirement in authorizations.** All Federal authorizations to carry out land use activities on Federal lands or tribal lands, including all leases and permits, must include a requirement for the holder of the authorization to notify the appropriate Federal or tribal official immediately upon the discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony pursuant to Sec. 10.4 (b) of these regulations.


Sec. 10.5 Consultation.
Consultation as part of the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal lands must be conducted in accordance with the following requirements.

(a) **Consulting parties.** Federal agency officials must consult with known lineal descendants and Indian tribe officials:
   (1) From Indian tribes on whose aboriginal lands the planned activity will occur or where the inadvertent discovery has been made; and
   (2) From Indian tribes and Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony; and
   (3) From Indian tribes and Native Hawaiian organizations that have a demonstrated cultural
relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(b) **Initiation of consultation.** (1) Upon receiving notice of, or otherwise becoming aware of, an inadvertent discovery or planned activity that has resulted or may result in the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony on Federal lands, the responsible Federal agency official must, as part of the procedures described in Sec. Sec. 10.3 and 10.4, take appropriate steps to identify the lineal descendant, Indian tribe, or Native Hawaiian organization entitled to custody of the human remains, funerary objects, sacred objects, or objects of cultural patrimony pursuant to Sec. 10.6 and Sec. 10.14. The Federal agency official shall notify in writing:

(i) Any known lineal descendants of the individual whose remains, funerary objects, sacred objects, or objects of cultural patrimony have been or are likely to be excavated intentionally or discovered inadvertently; and

(ii) The Indian tribes or Native Hawaiian organizations that are likely to be culturally affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony that have been or are likely to be excavated intentionally or discovered inadvertently; and

(iii) The Indian tribes which aboriginally occupied the area in which the human remains, funerary objects, sacred objects, or objects of cultural patrimony have been or are likely to be excavated intentionally or discovered inadvertently; and

(iv) The Indian tribes or Native Hawaiian organizations that have a demonstrated cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony that have been or are likely to be excavated intentionally or discovered inadvertently.

(2) The notice must propose a time and place for meetings or consultation to further consider the intentional excavation or inadvertent discovery, the Federal agency's proposed treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony that may be excavated, and the proposed disposition of any intentionally excavated or inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(3) The consultation must seek to identify traditional religious leaders who should also be consulted and seek to identify, where applicable, lineal descendants and Indian tribes or Native Hawaiian organizations affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(c) **Provision of information.** During the consultation process, as appropriate, the Federal agency official must provide the following information in writing to the lineal descendants and the officials of Indian tribes or Native Hawaiian organizations that are or are likely to be affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands:

(1) A list of all lineal descendants and Indian tribes or Native Hawaiian organizations that are being, or have been, consulted regarding the particular human remains, funerary objects, sacred objects, or objects of cultural patrimony;

(2) An indication that additional documentation used to identify affiliation will be supplied upon request.

(d) **Requests for information.** During the consultation process, Federal agency officials must request, as appropriate, the following information from Indian tribes or Native Hawaiian
organizations that are, or are likely to be, affiliated pursuant to Sec. 10.6 (a) with intentionally excavated or inadvertently discovered human remains, funerary objects, sacred objects, or objects of cultural patrimony:

(1) Name and address of the Indian tribe official to act as representative in consultations related to particular human remains, funerary objects, sacred objects, or objects of cultural patrimony;

(2) Names and appropriate methods to contact lineal descendants who should be contacted to participate in the consultation process;

(3) Recommendations on how the consultation process should be conducted; and

(4) Kinds of cultural items that the Indian tribe or Native Hawaiian organization considers likely to be unassociated funerary objects, sacred objects, or objects of cultural patrimony.

(e) Written plan of action. Following consultation, the Federal agency official must prepare, approve, and sign a written plan of action. A copy of this plan of action must be provided to the lineal descendants, Indian tribes and Native Hawaiian organizations involved. Lineal descendants and Indian tribe official(s) may sign the written plan of action as appropriate. At a minimum, the plan of action must comply with Sec. 10.3 (b)(1) and document the following:

(1) The kinds of objects to be considered as cultural items as defined in Sec. 10.2 (b);

(2) The specific information used to determine custody pursuant to Sec. 10.6;

(3) The planned treatment, care, and handling of human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;

(4) The planned archeological recording of the human remains, funerary objects, sacred objects, or objects of cultural patrimony recovered;

(5) The kinds of analysis planned for each kind of object;

(6) Any steps to be followed to contact Indian tribe officials at the time of intentional excavation or inadvertent discovery of specific human remains, funerary objects, sacred objects, or objects of cultural patrimony;

(7) The kind of traditional treatment, if any, to be afforded the human remains, funerary objects, sacred objects, or objects of cultural patrimony by members of the Indian tribe or Native Hawaiian organization;

(8) The nature of reports to be prepared; and

(9) The planned disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony following Sec. 10.6.

(f) Comprehensive agreements. Whenever possible, Federal Agencies should enter into comprehensive agreements with Indian tribes or Native Hawaiian organizations that are affiliated with human remains, funerary objects, sacred objects, or objects of cultural patrimony and have claimed, or are likely to claim, those human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands. These agreements should address all Federal agency land management activities that could result in the intentional excavation or inadvertent discovery of human remains, funerary objects, sacred objects, or objects of cultural patrimony.

Consultation should lead to the establishment of a process for effectively carrying out the requirements of these regulations regarding standard consultation procedures, the determination of custody consistent with procedures in this section and Sec. 10.6, and the treatment and disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony. The signed
agreements, or the correspondence related to the effort to reach agreements, must constitute proof of consultation as required by these regulations.

(g) **Traditional religious leaders.** The Federal agency official must be cognizant that Indian tribe officials may need to confer with traditional religious leaders prior to making recommendations. Indian tribe officials are under no obligation to reveal the identity of traditional religious leaders.[60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41293, Aug. 1, 1997]

**Sec. 10.6 Custody.**

(a) **Priority of custody.** This section carries out section 3 (a) of the Act, subject to the limitations of Sec. 10.15, regarding the custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently in Federal or tribal lands after November 16, 1990. For the purposes of this section, custody means ownership or control of human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently in Federal or tribal lands after November 16, 1990. Custody of these human remains, funerary objects, sacred objects, or objects of cultural patrimony is, with priority given in the order listed:

1. In the case of human remains and associated funerary objects, in the lineal descendant of the deceased individual as determined pursuant to Sec. 10.14 (b);
2. In cases where a lineal descendant cannot be ascertained or no claim is made, and with respect to unassociated funerary objects, sacred objects, and objects of cultural patrimony:
   i. In the Indian tribe on whose tribal land the human remains, funerary objects, sacred objects, or objects of cultural patrimony were excavated intentionally or discovered inadvertently;
   ii. In the Indian tribe or Native Hawaiian organization that has the closest cultural affiliation with the human remains, funerary objects, sacred objects, or objects of cultural patrimony as determined pursuant to Sec. 10.14 (c); or
   iii. In circumstances in which the cultural affiliation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony cannot be ascertained and the objects were excavated intentionally or discovered inadvertently on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of an Indian tribe:
      A. In the Indian tribe aboriginally occupying the Federal land on which the human remains, funerary objects, sacred objects, or objects of cultural patrimony were excavated intentionally or discovered inadvertently, or
      B. If it can be shown by a preponderance of the evidence that a different Indian tribe or Native Hawaiian organization has a stronger cultural relationship with the human remains, funerary objects, sacred objects, or objects of cultural patrimony, in the Indian tribe or Native Hawaiian organization that has the strongest demonstrated relationship with the objects.

(b) **Custody of human remains, funerary objects, sacred objects, or objects of cultural patrimony and other provisions of the Act apply to all intentional excavations and inadvertent discoveries made after November 16, 1990, including those made before the effective date of these regulations.
(c) Final notice, claims and disposition with respect to Federal lands. Upon determination of the lineal descendant, Indian tribe, or Native Hawaiian organization that under these regulations appears to be entitled to custody of particular human remains, funerary objects, sacred objects, or objects of cultural patrimony excavated intentionally or discovered inadvertently on Federal lands, the responsible Federal agency official must, subject to the notice required herein and the limitations of Sec. 10.15, transfer custody of the objects to the lineal descendant, Indian tribe, or Native Hawaiian organization following appropriate procedures, which must respect traditional customs and practices of the affiliated Indian tribes or Native Hawaiian organizations in each instance. Prior to any such disposition by a Federal agency official, the Federal agency official must publish general notices of the proposed disposition in a newspaper of general circulation in the area in which the human remains, funerary objects, sacred objects, or objects of cultural patrimony were excavated intentionally or discovered inadvertently and, if applicable, in a newspaper of general circulation in the area(s) in which affiliated Indian tribes or Native Hawaiian organizations members now reside. The notice must provide information as to the nature and affiliation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony and solicit further claims to custody. The notice must be published at least two (2) times at least a week apart, and the transfer must not take place until at least thirty (30) days after the publication of the second notice to allow time for any additional claimants to come forward. If additional claimants do come forward and the Federal agency official cannot clearly determine which claimant is entitled to custody, the Federal agency must not transfer custody of the objects until such time as the proper recipient is determined pursuant to these regulations. The Federal agency official must send a copy of the notice and information on when and in what newspaper(s) the notice was published to the Departmental Consulting Archeologist.


Sec. 10.7 Disposition of unclaimed human remains, funerary objects, sacred objects, or objects of cultural patrimony. [Reserved]

Subpart C--Human Remains, Funerary Objects, Sacred Objects, or Objects of Cultural Patrimony in Museums and Federal Collections

Sec. 10.8 Summaries.

(a) General. This section carries out section 6 of the Act. Under section 6 of the Act, each museum or Federal agency that has possession or control over collections which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony must complete a summary of these collections based upon available information held by the museum or Federal agency. The purpose of the summary is to provide information about the collections to lineal descendants and culturally affiliated Indian tribes or Native Hawaiian organizations that may wish to request repatriation of such objects. The summary serves in lieu of an object-by-object inventory of these collections, although, if an inventory is available, it may be substituted. Federal agencies are responsible for ensuring that these requirements are met for all collections from their lands or generated by their actions whether the collections are held by the Federal agency or by a non-Federal institution.

(b) Contents of summaries. For each collection or portion of a collection, the summary must
include: an estimate of the number of objects in the collection or portion of the collection; a description of the kinds of objects included; reference to the means, date(s), and location(s) in which the collection or portion of the collection was acquired, where readily ascertainable; and information relevant to identifying lineal descendants, if available, and cultural affiliation.

(c) **Completion.** Summaries must be completed not later than November 16, 1993.

(d) **Consultation.** (1) Consulting parties. Museum and Federal agency officials must consult with Indian tribe officials and traditional religious leaders:
   (i) From whose tribal lands unassociated funerary objects, sacred objects, or objects of cultural patrimony originated;
   (ii) That are, or are likely to be, culturally affiliated with unassociated funerary objects, sacred objects, or objects of cultural patrimony; and
   (iii) From whose aboriginal lands unassociated funerary objects, sacred objects, or objects of cultural patrimony originated.

(2) Initiation of consultation. Museum and Federal agency officials must begin summary consultation no later than the completion of the summary process. Consultation may be initiated with a letter, but should be followed up by telephone or face-to-face dialogue with the appropriate Indian tribe official.

(3) Provision of information. During summary consultation, museum and Federal agency officials must provide copies of the summary to lineal descendants, when known, and to officials and traditional religious leaders representing Indian tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the cultural items. A copy of the summary must also be provided to the Departmental Consulting Archeologist. Upon request by lineal descendants or Indian tribe officials, museum and Federal agency officials must provide lineal descendants, Indian tribe officials and traditional religious leaders with access to records, catalogues, relevant studies, or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of objects covered by the summary. Access to this information may be requested at any time and must be provided in a reasonable manner to be agreed upon by all parties. The Review committee also must be provided access to such materials.

(4) Requests for information. During the summary consultation, museum and Federal agency officials must request, as appropriate, the following information from Indian tribes and Native Hawaiian organizations that are, or are likely to be, culturally affiliated with their collections:
   (i) Name and address of the Indian tribe official to act as representative in consultations related to particular objects;
   (ii) Recommendations on how the consultation process should be conducted, including:
      (A) Names and appropriate methods to contact any lineal descendants, if known, of individuals whose unassociated funerary objects or sacred objects are included in the summary;
      (B) Names and appropriate methods to contact any traditional religious leaders that the Indian tribe or Native Hawaiian organization thinks should be consulted regarding the collections; and
   (iii) Kinds of cultural items that the Indian tribe or Native Hawaiian organization considers to be funerary objects, sacred objects, or objects of cultural patrimony.
(e) **Museum and Federal agency officials** must document the following information regarding unassociated funerary objects, sacred objects, and objects of cultural patrimony in their collections and must use this documentation in determining the individuals, Indian tribes, and Native Hawaiian organizations with which they are affiliated:

1. Accession and catalogue entries;
2. Information related to the acquisition of unassociated funerary object, sacred object, or object of cultural patrimony, including:
   - (i) The name of the person or organization from whom the object was obtained, if known;
   - (ii) The date of acquisition;
   - (iii) The place each object was acquired, i.e., name or number of site, county, State, and Federal agency administrative unit, if applicable; and
   - (iv) The means of acquisition, i.e., gift, purchase, or excavation;
3. A description of each unassociated funerary object, sacred object, or object of cultural patrimony, including dimensions, materials, and photographic documentation, if appropriate, and the antiquity of such objects, if known;
4. A summary of the evidence used to determine the cultural affiliation of the unassociated funerary objects, sacred objects, or objects of cultural patrimony pursuant to Sec. 10.14 of these regulations.

(f) **Notification.** Repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony to lineal descendants, culturally affiliated Indian tribes, or Native Hawaiian organizations as determined pursuant to Sec. 10.10 (a), must not proceed prior to submission of a notice of intent to repatriate to the Departmental Consulting Archeologist, and publication of the notice of intent to repatriate in the Federal Register. The notice of intent to repatriate must describe the unassociated funerary objects, sacred objects, or objects of cultural patrimony being claimed in sufficient detail so as to enable other individuals, Indian tribes or Native Hawaiian organizations to determine their interest in the claimed objects. It must include information that identifies each claimed unassociated funerary object, sacred object, or object of cultural patrimony and the circumstances surrounding its acquisition, and describes the objects that are clearly identifiable as to cultural affiliation. It must also describe the objects that are not clearly identifiable as being culturally affiliated with a particular Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the objects, are likely to be culturally affiliated with a particular Indian tribe or Native Hawaiian organization. The Departmental Consulting Archeologist must publish the notice of intent to repatriate in the Federal Register. Repatriation may not occur until at least thirty (30) days after publication of the notice of intent to repatriate in the Federal Register.


**Sec. 10.9 Inventories.**

(a) **General.** This section carries out section 5 of the Act. Under section 5 of the Act, each museum or Federal agency that has possession or control over holdings or collections of human remains and associated funerary objects must compile an inventory of such objects, and, to the fullest extent possible based on information possessed by the museum or Federal agency, must identify the geographical and cultural affiliation of each item. The purpose of the inventory is to
facilitate repatriation by providing clear descriptions of human remains and associated funerary objects and establishing the cultural affiliation between these objects and present-day Indian tribes and Native Hawaiian organizations. Museums and Federal agencies are encouraged to produce inventories first on those portions of their collections for which information is readily available or about which Indian tribes or Native Hawaiian organizations have expressed special interest. Early focus on these parts of collections will result in determinations that may serve as models for other inventories. Federal agencies must ensure that these requirements are met for all collections from their lands or generated by their actions whether the collections are held by the Federal agency or by a non-Federal institution.

(b) Consultation—(1) Consulting parties. Museum and Federal agency officials must consult with:
(i) Lineal descendants of individuals whose remains and associated funerary objects are likely to be subject to the inventory provisions of these regulations; and
(ii) Indian tribe officials and traditional religious leaders:
(A) From whose tribal lands the human remains and associated funerary objects originated;
(B) That are, or are likely to be, culturally affiliated with human remains and associated funerary objects; and
(C) From whose aboriginal lands the human remains and associated funerary objects originated.
(2) Initiation of consultation. Museum and Federal agency officials must begin inventory consultation as early as possible, no later in the inventory process than the time at which investigation into the cultural affiliation of human remains and associated funerary objects is being conducted. Consultation may be initiated with a letter, but should be followed up by telephone or face-to-face dialogue.
(3) Provision of information. During inventory consultation, museums and Federal agency officials must provide the following information in writing to lineal descendants, when known, and to officials and traditional religious leaders representing Indian tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains and associated funerary objects.
(i) A list of all Indian tribes and Native Hawaiian organizations that are, or have been, consulted regarding the particular human remains and associated funerary objects;
(ii) A general description of the conduct of the inventory;
(iii) The projected time frame for conducting the inventory; and
(iv) An indication that additional documentation used to identify cultural affiliation will be supplied upon request.
(4) Requests for information. During the inventory consultation, museum and Federal agency officials must request, as appropriate, the following information from Indian tribes and Native Hawaiian organizations that are, or are likely to be, culturally affiliated with their collections:
(i) Name and address of the Indian tribe official to act as representative in consultations related to particular human remains and associated funerary objects;
(ii) Recommendations on how the consultation process should be conducted, including:
(A) Names and appropriate methods to contact any lineal descendants of individuals whose remains and associated funerary objects are or are likely to be included in the inventory; and
(B) Names and appropriate methods to contact traditional religious leaders who should be consulted regarding the human remains and associated funerary objects.
(iii) Kinds of objects that the Indian tribe or Native Hawaiian organization reasonably believes to have been made exclusively for burial purposes or to contain human remains of their ancestors.
(c) **Required information.** The following documentation must be included, if available, for all inventories completed by museum or Federal agency officials:

(1) Accession and catalogue entries, including the accession/catalogue entries of human remains with which funerary objects were associated;

(2) Information related to the acquisition of each object, including:
   (i) The name of the person or organization from whom the object was obtained, if known;
   (ii) The date of acquisition,
   (iii) The place each object was acquired, i.e., name or number of site, county, State, and Federal agency administrative unit, if applicable; and
   (iv) The means of acquisition, i.e., gift, purchase, or excavation;

(3) A description of each set of human remains or associated funerary object, including dimensions, materials, and, if appropriate, photographic documentation, and the antiquity of such human remains or associated funerary objects, if known;

(4) A summary of the evidence, including the results of consultation, used to determine the cultural affiliation of the human remains and associated funerary objects pursuant to Sec. 10.14 of these regulations.

(d) **Documents.** Two separate documents comprise the inventory:

(1) A listing of all human remains and associated funerary objects that are identified as being culturally affiliated with one or more present-day Indian tribes or Native Hawaiian organizations. The list must indicate for each item or set of items whether cultural affiliation is clearly determined or likely determined based upon the preponderance of the evidence; and

(2) A listing of all culturally unidentifiable human remains and associated funerary objects for which no culturally affiliated present-day Indian tribe or Native Hawaiian organization can be determined.

(e) **Notification.** (1) If the inventory results in the identification or likely identification of the cultural affiliation of any particular human remains or associated funerary objects with one or more Indian tribes or Native Hawaiian organizations, the museum or Federal agency, not later than six (6) months after completion of the inventory, must send such Indian tribes or Native Hawaiian organizations the inventory of culturally affiliated human remains and associated funerary objects, including all information required under Sec. 10.9 (c), and a notice of inventory completion that summarizes the results of the inventory.

(2) The notice of inventory completion must summarize the contents of the inventory in sufficient detail so as to enable the recipients to determine their interest in claiming the inventoried items. It must identify each particular set of human remains or each associated funerary object and the circumstances surrounding its acquisition, describe the human remains or associated funerary objects that are clearly identifiable as to cultural affiliation, and describe the human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with an Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the human remains or associated objects, are identified as likely to be culturally affiliated with a particular Indian tribe or Native Hawaiian organization.

(3) If the inventory results in a determination that the human remains are of an identifiable individual, the museum or Federal agency official must convey this information to the lineal descendant of the deceased individual, if known, and to the Indian tribe or Native Hawaiian...
organization of which the deceased individual was culturally affiliated.

(4) The notice of inventory completion and a copy of the inventory must also be sent to the Departmental Consulting Archeologist. These submissions should be sent in both printed hard copy and electronic formats. Information on the proper format for electronic submission and suggested alternatives for museums and Federal agencies unable to meet these requirements are available from the Departmental Consulting Archeologist.

(5) Upon request by an Indian tribe or Native Hawaiian organization that has received or should have received a notice of inventory completion and a copy of the inventory as described above, a museum or Federal agency must supply additional available documentation to supplement the information provided with the notice. For these purposes, the term documentation means a summary of existing museum or Federal agency records including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding the acquisition and accession of human remains and associated funerary objects.

(6) If the museum or Federal agency official determines that the museum or Federal agency has possession of or control over human remains that cannot be identified as affiliated with a particular individual, Indian tribes or Native Hawaiian organizations, the museum or Federal agency must provide the Department Consulting Archeologist notice of this result and a copy of the list of culturally unidentifiable human remains and associated funerary objects. The Departmental Consulting Archeologist must make this information available to members of the Review Committee. Section 10.11 of these regulations will set forth procedures for disposition of culturally unidentifiable human remains of Native American origin. Museums or Federal agencies must retain possession of such human remains pending promulgation of Sec. 10.11 unless legally required to do otherwise, or recommended to do otherwise by the Secretary. Recommendations regarding the disposition of culturally unidentifiable human remains may be requested prior to final promulgation of Sec. 10.11.

(7) The Departmental Consulting Archeologist must publish notices of inventory completion received from museums and Federal agencies in the Federal Register.

(f) Completion. Inventories must be completed not later than November 16, 1995. Any museum that has made a good faith effort to complete its inventory, but which will be unable to complete the process by this deadline, may request an extension of the time requirements from the Secretary. An indication of good faith efforts must include, but not necessarily be limited to, the initiation of active consultation and documentation regarding the collections and the development of a written plan to carry out the inventory process. Minimum components of an inventory plan are: a definition of the steps required; the position titles of the persons responsible for each step; a schedule for carrying out the plan; and a proposal to obtain the requisite funding.


Sec. 10.10 Repatriation.

(a) Unassociated funerary objects, sacred objects, and objects of cultural patrimony--(1)

Criteria. Upon the request of a lineal descendant, Indian tribe, or Native Hawaiian organization, a museum or Federal agency must expeditiously repatriate unassociated funerary objects, sacred objects, or objects of cultural patrimony if all the following criteria are met:

(i) The object meets the definitions established in Sec. 10.2 (d)(2)(ii), (d)(3), or (d)(4); and
The cultural affiliation of the object is established:
(A) Through the summary, consultation, and notification procedures in Sec. 10.14 of these regulations; or
(B) By presentation of a preponderance of the evidence by a requesting Indian tribe or Native Hawaiian organization pursuant to section 7(c) of the Act; and
(iii) The known lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the museum or Federal agency does not have a right of possession to the objects as defined in Sec. 10.10 (a)(2); and
(iv) The agency or museum is unable to present evidence to the contrary proving that it does have a right of possession as defined below; and
(v) None of the specific exceptions listed in Sec. 10.10 (c) apply.

Right of possession. For purposes of this section, "right of possession" means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object, or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession to that object.

Notification. Repatriation must take place within ninety (90) days of receipt of a written request for repatriation that satisfies the requirements of paragraph (a)(1) of this section from a lineal descendant or culturally affiliated Indian tribe or Native Hawaiian organization, provided that the repatriation may not occur until at least thirty (30) days after publication of the notice of intent to repatriate in the Federal Register as described in Sec. 10.8.

Human remains and associated funerary objects—(1) Criteria. Upon the request of a lineal descendant, Indian tribe, or Native Hawaiian organization, a museum and Federal agency must expeditiously repatriate human remains and associated funerary objects if all of the following criteria are met:
(i) The human remains or associated funerary object meets the definitions established in Sec. 10.2 (d)(1) or (d)(2)(i); and
(ii) The affiliation of the deceased individual to known lineal descendant, present day Indian tribe, or Native Hawaiian organization:
(A) Has been reasonably traced through the procedures outlined in Sec. 10.9 and Sec. 10.14 of these regulations; or
(B) Has been shown by a preponderance of the evidence presented by a requesting Indian tribe or Native Hawaiian organization pursuant to section 7(c) of the Act; and
(iii) None of the specific exceptions listed in Sec. 10.10 (c) apply.

Notification. Repatriation must take place within ninety (90) days of receipt of a written request for repatriation that satisfies the requirements of Sec. 10.10 (b)(1) from the culturally affiliated Indian tribe or Native Hawaiian organization, provided that the repatriation may not occur until at least thirty (30) days after publication of the notice of inventory completion in the Federal Register as described in Sec. 10.9.

Exceptions. These requirements for repatriation do not apply to:
(1) Circumstances where human remains, funerary objects, sacred objects, or objects of cultural patrimony are indispensable to the completion of a specific scientific study, the outcome of which
is of major benefit to the United States. Human remains, funerary objects, sacred objects, or objects of cultural patrimony in such circumstances must be returned no later than ninety (90) days after completion of the study; or
(2) Circumstances where there are multiple requests for repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony and the museum or Federal agency, after complying with these regulations, cannot determine by a preponderance of the evidence which requesting party is the most appropriate claimant. In such circumstances, the museum or Federal agency may retain the human remains, funerary objects, sacred objects, or objects of cultural patrimony until such time as the requesting parties mutually agree upon the appropriate recipient or the dispute is otherwise resolved pursuant to these regulations or as ordered by a court of competent jurisdiction; or
(3) Circumstances where a court of competent jurisdiction has determined that the repatriation of the human remains, funerary objects, sacred objects, or objects of cultural patrimony in the possession or control of a museum would result in a taking of property without just compensation within the meaning of the Fifth Amendment of the United States Constitution, in which event the custody of the objects must be as provided under otherwise applicable law. Nothing in these regulations shall prevent a museum or Federal agency, where otherwise so authorized, from expressly relinquishing title to, right of possession of, or control over any human remains, funerary objects, sacred objects, or objects of cultural patrimony.
(4) Circumstances where the repatriation is not consistent with other repatriation limitations identified in Sec. 10.15 of these regulations.

(d) Place and manner of repatriation. The repatriation of human remains, funerary objects, sacred objects, or objects of cultural patrimony must be accomplished by the museum or Federal agency in consultation with the requesting lineal descendants, or culturally affiliated Indian tribe or Native Hawaiian organization, as appropriate, to determine the place and manner of the repatriation.

(e) The museum official or Federal agency official must inform the recipients of repatriations of any presently known treatment of the human remains, funerary objects, sacred objects, or objects of cultural patrimony with pesticides, preservatives, or other substances that represent a potential hazard to the objects or to persons handling the objects.

(f) Record of repatriation. (1) Museums and Federal agencies must adopt internal procedures adequate to permanently document the content and recipients of all repatriations.
(2) The museum official or Federal agency official, at the request of the Indian tribe official, may take such steps as are considered necessary pursuant to otherwise applicable law, to ensure that information of a particularly sensitive nature is not made available to the general public.

(g) Culturally unidentifiable human remains. If the cultural affiliation of human remains cannot be established pursuant to these regulations, the human remains must be considered culturally unidentifiable. Museum and Federal agency officials must report the inventory information regarding such human remains in their holdings to the Departmental Consulting Archeologist who will transmit this information to the Review Committee. The Review Committee is responsible for compiling an inventory of culturally unidentifiable human remains in the possession or control of
each museum and Federal agency, and, for recommending to the Secretary specific actions for
disposition of such human remains. [60 FR 62158, Dec. 4, 1995, as amended at 62 FR 41294,

Aug. 1, 1997]

Sec. 10.11 Disposition of culturally unidentifiable human remains. [Reserved]

Sec. 10.12 Civil penalties.

(a) The Secretary's Authority to Assess Civil Penalties. The Secretary is authorized by section 9

of the Act to assess civil penalties on any museum that fails to comply with the requirements of the

Act. As used in this Paragraph, "failure to comply with requirements of the Act" also means

failure to comply with applicable

portions of the regulations set forth in this Part. As used in this Paragraph "you" refers to the

museum or the museum official designated responsible for matters related to implementation of

the Act.

(b) Definition of "failure to comply." (1) Your museum has failed to comply with the

requirements of the Act if it:

(i) After November 16, 1990, sells or otherwise transfers human remains, funerary objects, sacred

objects, or objects of cultural patrimony contrary to provisions of the Act, including, but not

limited to, an unlawful sale or transfer to any individual or institution that is not required to

comply with the Act; or

(ii) After November 16, 1993, has not completed summaries as required by the Act; or

(iii) After November 16, 1995, or the date specified in an extension issued by the Secretary,

whichever is later, has not completed inventories as required by the Act; or

(iv) After May 16, 1996, or 6 months after completion of an inventory under an extension issued

by the Secretary, whichever is later, has not notified culturally affiliated Indian tribes and Native

Hawaiian organizations; or

(v) Refuses, absent any of the exemptions specified in Sec. 10.10(c) of this part, to repatriate

human remains, funerary object, sacred object, or object of cultural patrimony to a lineal

descendant or culturally affiliated Indian tribe or Native Hawaiian; or

(vi) Repatriates a human remains, funerary object, sacred object, or object of cultural patrimony

before publishing the required notice in the Federal Register;

(vii) Does not consult with lineal descendants, Indian tribe officials, and traditional religious

leaders as required; or

(viii) Does not inform the recipients of repatriations of any presently known treatment of the

human remains, funerary objects, sacred objects, or objects of cultural patrimony with pesticides,

preservatives, or other substances that represent a potential hazard to the objects or to persons

handling the objects.

(2) Each instance of failure to comply will constitute a separate violation.

(c) How to Notify the Secretary of a Failure to Comply. Any person may bring an allegation of

failure to comply to the attention of the Secretary. Allegations must be in writing, and should

include documentation identifying the provision of the Act with which there has been a failure to

comply and supporting facts of the alleged failure to comply. Documentation should include

evidence that the museum has possession or control of Native American cultural items, receives
Federal funds, and has failed to comply with specific provisions of the Act. Written allegations should be sent to the attention of the Director, National Park Service, 1849 C Street, NW, Washington, D.C. 20240.

(d) Steps the Secretary may take upon receiving such an allegation.
(1) The Secretary must acknowledge receipt of the allegation in writing.
(2) The Secretary also may:
   (i) Compile and review information relevant to the alleged failure to comply. The Secretary may request additional information, such as declarations and relevant papers, books, and documents, from the person making the allegation, the museum, and other parties;
   (ii) Identify the specific provisions of the Act with which you have allegedly failed to comply; and
   (iii) Determine if the institution of a civil penalty action is an appropriate remedy.
(3) The Secretary must provide written notification to the person making the allegation and the museum if the review of the evidence does not show a failure comply.

(e) How the Secretary notifies you of a failure to comply. (1) If the allegations are verified, the Secretary must serve you with a written notice of failure to comply either by personal delivery or by registered or certified mail (return receipt requested). The notice of failure to comply must include:
   (i) A concise statement of the facts believed to show a failure to comply;
   (ii) A specific reference to the provisions of the Act and/or these regulations with which you allegedly have not complied; and
   (iii) Notification of the right to request an informal discussion with the Secretary or a designee, to request a hearing, as provided below, or to await the Secretary's notice of assessment. The notice of failure to comply also must inform you of your right to seek judicial review of any final administrative decision assessing a civil penalty.
(2) With your consent, the Secretary may combine the notice of failure to comply with the notice of assessment described in paragraph (h) of this section.
(3) The Secretary also must send a copy of the notice of failure to comply to:
   (i) Any lineal descendant of a known Native American individual whose human remains, funerary objects, or sacred objects are in question; and
   (ii) Any Indian tribes or Native Hawaiian organizations that are, or are likely to be, culturally affiliated with the human remains, funerary objects, sacred objects, or objects of cultural patrimony in question.

(f) Actions you may take upon receipt of a notice of failure to comply. If you are served with a notice of failure to comply, you may:
(1) Seek informal discussions with the Secretary;
(2) Request a hearing. Figure 1 outlines the civil penalty hearing and appeal process. Where the Secretary has issued a combined notice of failure to comply and notice of assessment, the hearing and appeal processes will also be combined.
(3) Take no action and await the Secretary's notice of assessment.

(g) How the Secretary determines the penalty amount.
(1) The penalty amount must be determined on the record;
(2) The penalty amount must be .25 percent of your museum's annual budget, or $5,000,
whichever is less, and such additional sum as the Secretary may determine is appropriate after taking into account:

(i) The archeological, historical, or commercial value of the human remains, funerary object, sacred object, or object of cultural patrimony involved; and

(ii) The damages suffered, both economic and non-economic, by the aggrieved party or parties including, but not limited to, expenditures by the aggrieved party to compel the museum to comply with the Act; and

(iii) The number of violations that have occurred at your museum.

(3) An additional penalty of up to $1,000 per day after the date that the final administrative decision takes effect may be assessed if your museum continues to violate the Act.

(4) The Secretary may reduce the penalty amount if there is:

(i) A determination that you did not willfully fail to comply; or

(ii) An agreement by you to mitigate the violation, including, but not limited to, payment of restitution to the aggrieved party or parties; or

(iii) A determination that you are unable to pay, provided that this factor may not apply if you have been previously found to have failed to comply with these regulations; or,

(iv) A determination that the penalty constitutes excessive punishment under the circumstances.

(b) How the Secretary assesses the penalty. (1) The Secretary considers all available information, including information provided during the process of assessing civil penalties or furnished upon further request by the Secretary.

(2) The Secretary may assess the civil penalty upon completing informal discussions or when the period for requesting a hearing expires, whichever is later.

(3) The Secretary notifies you in writing of the penalty amount assessed by serving a written notice of assessment, either in person or by registered or certified mail (return receipt requested). The notice includes:

(i) The basis for determining the penalty amount assessed and/or any offer to mitigate or remit the penalty; and

(ii) Notification of the right to request a hearing, including the procedures to follow, and to seek judicial review of any final administrative decision that assesses a civil penalty.

(i) Actions that you may take upon receipt of a notice of assessment. If you are served with a notice of assessment, you may do one of the following:

(1) Accept in writing or by payment of the proposed penalty, or any mitigation or remission offered in the notice of assessment. If you accept the proposed penalty, mitigation, or remission, you waive the right to request a hearing.

(2) Seek informal discussions with the Secretary.

(3) File a petition for relief. You may file a petition for relief with the Secretary within 45 calendar days of receiving the notice of assessment. Your petition for relief may request the Secretary to assess no penalty or to reduce the amount. Your petition must be in writing and signed by an official authorized to sign such documents. Your petition must set forth in full the legal or factual basis for the requested relief.

(4) Request a hearing. Figure 1 outlines the civil penalty hearing and appeal process.

(i) In addition to the documentation required in paragraph (g) of this section, your request must
include a copy of the notice of assessment and must identify the basis for challenging the assessment.

(ii) In this hearing, the amount of the civil penalty assessed must be determined in accordance with paragraph (h) of this section, and will not be limited to the amount assessed by the Secretary or any offer of mitigation or remission made by the Secretary.

(j) **How you request a hearing.** (1) You may file a written, dated request for a hearing on a notice of failure to comply or notice of assessment with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203-1923. You must enclose a copy of the notice of failure to comply or the notice of assessment. Your request must state the relief sought, the basis for challenging the facts used as the basis for determining the failure to comply or fixing the assessment, and your preference of the place and date for a hearing. You must serve a copy of the request on the Solicitor of the Department of the Interior personally or by registered or certified mail (return receipt requested) at the address specified in the notice of failure to comply or notice of assessment. Hearings must take place following procedures set forth in 43 CFR part 4, subparts A and B.

(2) Your failure to file a written request for a hearing within 45 days of the date of service of a notice of failure to comply or notice of assessment waives your right to a hearing.

(3) Upon receiving a request for a hearing, the Hearings Division assigns an administrative law judge to the case, gives notice of assignment promptly to the parties, and files all pleadings, papers, and other documents in the proceeding directly with the administrative law judge, with copies served on the opposing party.

(4) Subject to the provisions of 43 CFR 1.3, you may appear by representative or by counsel, and may participate fully in the proceedings. If you fail to appear and the administrative law judge determines that this failure is without good cause, the administrative law judge may, in his/her discretion, determine that this failure waives your right to a hearing and consent to the making of a decision on the record.

(5) Departmental counsel, designated by the Solicitor of the Department of the Interior, represents the Secretary in the proceedings. Upon notice to the Secretary of the assignment of an administrative law judge to the case, this counsel must enter his/her appearance on behalf of the Secretary and must file all petitions and correspondence exchanges by the Secretary and the respondent that become part of the hearing record. Thereafter, you must serve all documents for the Secretary on his/her counsel.

(6) **Hearing administration.** (i) The administrative law judge has all powers accorded by law and necessary to preside over the parties and the proceedings and to make decisions under 5 U.S.C. 554-557.

(ii) The transcript of testimony; the exhibits; and all papers, documents, and requests filed in the proceedings constitute the record for decision. The administrative law judge renders a written decision upon the record, which sets forth his/her findings of fact and conclusions of law, and the reasons and basis for them.

(iii) Unless you file a notice of appeal described in these regulations, the administrative law judge's decision constitutes the final administrative determination of the Secretary in the matter and takes effect 30 calendar days from this decision.

(k) **How you appeal a decision.** (1) Either you or the Secretary may appeal the decision of an
By filing a "Notice of Appeal" with the Interior Board of Indian Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203-1954, within 30 calendar days of the date of the administrative law judge's decision. This notice must be accompanied by proof of service on the administrative law judge and the opposing party.

(2) To the extent they are not inconsistent with these regulations, the provisions of the Department of the Interior Hearings and Appeals Procedures in 43 CFR part 4, subpart D, apply to such appeal proceedings. The appeal board's decision on the appeal must be in writing and takes effect as the final administrative determination of the Secretary on the date that the decision is rendered, unless otherwise specified in the decision.

(3) You may obtain copies of decisions in civil penalty proceedings instituted under the Act by sending a request to the Interior Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, VA 22203-1954. Fees for this service are established by the director of that office.

(1) **The final administrative decision.** (1) When you have been served with a notice of assessment and have accepted the penalty as provided in these regulations, the notice constitutes the final administrative decision.

(2) When you have been served with a notice of assessment and have not filed a timely request for a hearing as provided in these regulations, the notice of assessment constitutes the final administrative decision.

(3) When you have been served with a notice of assessment and have filed a timely request for a hearing as provided in these regulations, the decision resulting from the hearing or any applicable administrative appeal from it constitutes the final administrative decision.

(m) **How you pay the penalty.** (1) If you are assessed a civil penalty, you have 45 calendar days from the date of issuance of the final administrative decision to make full payment of the penalty assessed to the Secretary, unless you have filed a timely request for appeal with a court of competent jurisdiction.

(2) If you fail to pay the penalty, the Secretary may request the Attorney General of the United States to collect the penalty by instituting a civil action in the U.S. District Court for the district in which your museum is located. In these actions, the validity and amount of the penalty is not subject to review by the court.

(3) Assessing a penalty under this section is not a waiver by the Secretary of the right to pursue other available legal or administrative remedies. [68 FR 16360, Apr. 3, 2003]

Sec. 10.13 Future applicability. [Reserved]

Subpart D--General

Sec. 10.14 Lineal descent and cultural affiliation.

(a) **General.** This section identifies procedures for determining lineal descent and cultural affiliation between present-day individuals and Indian tribes or Native Hawaiian organizations and human remains, funerary objects, sacred objects, or objects of cultural patrimony in museum or Federal agency collections or excavated intentionally or discovered inadvertently from Federal
lands. They may also be used by Indian tribes and Native Hawaiian organizations with respect to tribal lands.

(b) **Criteria for determining lineal descent.** A lineal descendant is an individual tracing his or her ancestry directly and without interruption by means of the traditional kinship system of the appropriate Indian tribe or Native Hawaiian organization or by the common law system of descent to a known Native American individual whose remains, funerary objects, or sacred objects are being requested under these regulations. This standard requires that the earlier person be identified as an individual whose descendants can be traced.

(c) **Criteria for determining cultural affiliation.** Cultural affiliation means a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. All of the following requirements must be met to determine cultural affiliation between a present-day Indian tribe or Native Hawaiian organization and the human remains, funerary objects, sacred objects, or objects of cultural patrimony of an earlier group:

1. Existence of an identifiable present-day Indian tribe or Native Hawaiian organization with standing under these regulations and the Act; and
2. Evidence of the existence of an identifiable earlier group. Support for this requirement may include, but is not necessarily limited to evidence sufficient to:
   1. Establish the identity and cultural characteristics of the earlier group,
   2. Document distinct patterns of material culture manufacture and distribution methods for the earlier group, or
   3. Establish the existence of the earlier group as a biologically distinct population; and
3. Evidence of the existence of a shared group identity that can be reasonably traced between the present-day Indian tribe or Native Hawaiian organization and the earlier group. Evidence to support this requirement must establish that a present-day Indian tribe or Native Hawaiian organization has been identified from prehistoric or historic times to the present as descending from the earlier group.

(d) A **finding of cultural affiliation should** be based upon an overall evaluation of the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of some gaps in the record.

(e) **Evidence.** Evidence of a kin or cultural affiliation between a present-day individual, Indian tribe, or Native Hawaiian organization and human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established by using the following types of evidence: geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion.

(f) **Standard of proof.** Lineal descent of a present-day individual from an earlier individual and cultural affiliation of a present-day Indian tribe or Native Hawaiian organization to human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established by a preponderance of the evidence. Claimants do not have to establish cultural affiliation with scientific certainty.
Limitations and remedies.

(a) **Failure to claim prior to repatriation.** (1) Any person who fails to make a timely claim prior to the repatriation or disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony is deemed to have irrevocably waived any right to claim such items pursuant to these regulations or the Act. For these purposes, a "timely claim" means the filing of a written claim with a responsible museum or Federal agency official prior to the time the particular human remains, funerary objects, sacred objects, or objects of cultural patrimony at issue are duly repatriated or disposed of to a claimant by a museum or Federal agency pursuant to these regulations.

(2) If there is more than one (1) claimant, the human remains, funerary object, sacred object, or objects of cultural patrimony may be held by the responsible museum or Federal agency or person in possession thereof pending resolution of the claim. Any person who is in custody of such human remains, funerary objects, sacred objects, or objects of cultural patrimony and does not claim entitlement to them must place the objects in the possession of the responsible museum or Federal agency for retention until the question of custody is resolved.

(b) **Failure to claim where no repatriation or disposition has occurred.** [Reserved]

c) **Exhaustion of remedies.** No person is considered to have exhausted his or her administrative remedies with respect to the repatriation or disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony subject to subpart B of these regulations, or, with respect to Federal lands, subpart C of these regulations, until such time as the person has filed a written claim for repatriation or disposition of the objects with the responsible museum or Federal agency and the claim has been duly denied following these regulations.

d) **Savings provisions.** Nothing in these regulations can be construed to:

(1) Limit the authority of any museum or Federal agency to:

(i) Return or repatriate human remains, funerary objects, sacred objects, or objects of cultural patrimony to Indian tribes, Native Hawaiian organizations, or individuals; and

(ii) Enter into any other agreement with the consent of the culturally affiliated Indian tribe or Native Hawaiian organization as to the disposition of, or control over, human remains, funerary objects, sacred objects, or objects of cultural patrimony.

(2) Delay actions on repatriation requests that were pending on November 16, 1990;

(3) Deny or otherwise affect access to court;

(4) Limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or

(5) Limit the application of any State or Federal law pertaining to theft of stolen property.


Sec. 10.16 Review committee.

(a) **General.** The Review Committee will advise Congress and the Secretary on matters relating to these regulations and the Act, including, but not limited to, monitoring the performance of museums and Federal agencies in carrying out their responsibilities, facilitating and making
recommendations on the resolution of disputes as described further in Sec. 10.17, and compiling a record of culturally unidentifiable human remains that are in the possession or control of museums and Federal agencies and recommending actions for their disposition.

(b) **Recommendations.** Any recommendation, finding, report, or other action of the Review Committee is advisory only and not binding on any person. Any records and findings made by the Review Committee may be admissible as evidence in actions brought by persons alleging a violation of the Act.

**Sec. 10.17 Dispute resolution.**

(a) **Formal and informal resolutions.** Any person who wishes to contest actions taken by museums, Federal agencies, Indian tribes, or Native Hawaiian organizations with respect to the repatriation and disposition of human remains, funerary objects, sacred objects, or objects of cultural patrimony is encouraged to do so through informal negotiations to achieve a fair resolution of the matter. The Review Committee may aid in this regard as described below. In addition, the United States District Courts have jurisdiction over any action brought that alleges a violation of the Act.

(b) **Review Committee Role.** The Review Committee may facilitate the informal resolution of disputes relating to these regulations among interested parties that are not resolved by good faith negotiations. Review Committee actions may include convening meetings between parties to disputes, making advisory findings as to contested facts, and making recommendations to the disputing parties or to the Secretary as to the proper resolution of disputes consistent with these regulations and the Act.

**Appendix A to Part 10—Sample Summary**

The following is a generic sample and should be used as a guideline for preparation of summaries tailoring the information to the specific circumstances of each case.

Before November 17, 1993

Chairman or Other Authorized Official Indian tribe or Native Hawaiian organization

Street

State

Dear Sir/Madame Chair:

I write to inform you of collections held by our museum which may contain unassociated funerary objects, sacred objects, or objects of cultural patrimony that are, or are likely to be, culturally affiliated with your Indian tribe or Native Hawaiian organization. This notification is required by section 6 of the Native American Graves Protection and Repatriation Act. Our ethnographic collection includes approximately 200 items specifically identified as being manufactured or used by members of your Indian tribe or Native Hawaiian organization. These items represent various categories of material culture, including sea and land hunting, fishing, tools, household equipment, clothing, travel and transportation, personal adornment, smoking, toys, and figurines. The collection includes thirteen objects identified in our records as "medicine bags." Approximately half of these items were collected by John Doe during his expedition to your reservation in 1903 and accessioned by the museum that same year (see Major Museum Publication, no. 65 (1965).
Another 50 of these items were collected by Jane Roe during her expeditions to your reservation between 1950-1960 and accessioned by the museum in 1970 (see Major Museum: no. 75 (1975). Accession information indicates that several of these items were collected from members of the Able and Baker families. For the remaining approximately 50 items, which were obtained from various collectors between 1930 and 1980, additional collection information is not readily available.

In addition to the above mentioned items, the museum has approximately 50 ethnographic items obtained from the estate of a private collector and identified as being collected from the "northwest portion of the State." Our archeological collection includes approximately 1,500 items recovered from ten archeological sites on your reservation and another 5,000 items from fifteen sites within the area recognized by the Indian Claims Commission as being part of your Indian tribe's aboriginal territory.

Please feel free to contact Fred Poe at (012) 345-6789 regarding the identification and potential repatriation of unassociated funerary objects, sacred objects, or objects of cultural patrimony in this collection that are, or are likely to be, culturally affiliated with your Indian tribe or Native Hawaiian organization. You are invited to review our records, catalogues, relevant studies or other pertinent data for the purpose of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of these items. We look forward to working together with you.

Sincerely,
Museum Official
Major Museum

Appendix B to Part 10—Sample Notice of Inventory Completion
The following is an example of a Notice of Inventory Completion published in the Federal Register.

National Park Service
Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Hancock County, ME, in the Control of the National Park Service.
AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given following provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of completion of the inventory of human remains and associated funerary objects from a site in Hancock County, ME, that are presently in the control of the National Park Service.

A detailed inventory and assessment of these human remains has been made by National Park Service curatorial staff, contracted specialists in physical anthropology and prehistoric archeology, and representatives of the Penobscot Nation, Aroostook Band of Micmac, Houlton Band of Maliseet, and the Passamaquoddy Nation, identified collectively hereafter as the Wabanaki Tribes.
Maliseet, and the Passamaquoddy Nation, identified collectively hereafter as the Wabanaki Tribes of Maine.

The partial remains of at least seven individuals (including five adults, one subadult, and one child) were recovered in 1977 from a single grave at the Fernald Point Site (ME Site 43-24), a prehistoric shell midden on Mount Desert Island, within the boundary of Acadia National Park. A bone harpoon head, a modified beaver tooth, and several animal and fish bone fragments were found associated with the eight individuals. Radiocarbon assays indicate the burial site dates between 1035-1155 AD. The human remains and associated funerary objects have been catalogued as ACAD-5747, 5749, 5750, 5751, 5752, 5783, 5784. The partial remains of an eighth individual (an elderly male) was also recovered in 1977 from a second grave at the Fernald Point Site. No associated funerary objects were recovered with this individual. Radiocarbon assays indicate the second burial site dates between 480-680 AD. The human remains have been catalogued as ACAD-5748. The human remains and associated funerary objects of all nine individuals are currently in the possession of the University of Maine, Orono, ME.

Inventory of the human remains and associated funerary objects and review of the accompanying documentation indicates that no known individuals were identifiable. A representative of the Wabanaki Tribes of Maine has identified the Acadia National Park area as a historic gathering place for his people and stated his belief that there exists a relationship of shared group identity between these individuals and the Wabanaki Tribes of Maine. The Prehistoric Subcommittee of the Maine State Historic Preservation Office's Archaeological Advisory Committee has found it reasonable to trace a shared group identity from the Late Prehistoric Period (1000-1500 AD) inhabitants of Maine as an undivided whole to the four modern Indian tribes known collectively as the Wabanaki Tribes of Maine on the basis of geographic proximity; survivals of stone, ceramic and perishable material culture skills; and probable linguistic continuity across the Late Prehistoric/Contact Period boundary. In a 1979 article, Dr. David Sanger, the archeologist who conducted the 1977 excavations at the Fernald Point Site and uncovered the abovementioned burials, recognizes a relationship between Maine sites dating to the Ceramic Period (2,000 B.P.-1600 A.D.) and present-day Algonkian speakers generally known as Abenakis, including the Micmac, Maliseet, Passamaquoddy, Penboscot, Kennebec, and Pennacook groups.

Based on the above mentioned information, officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these human remains and associated funerary objects and the Wabanaki Tribes of Maine.

This notice has been sent to officials of the Wabanaki Tribes of Maine. Representatives of any other Indian tribe which believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Len Bobinchock, Acting Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, ME 04609, telephone: (207) 288-0374, before August 31, 1994. Repatriation of these human remains and associated funerary objects to the Wabanaki Tribes of Maine may begin after that date if no additional claimants come forward.

Dated: July 21, 1994
Francis P. McManamon, Departmental Consulting Archeologist, Chief, Archeological Assistance Division.
[Published: August 1, 1994]
California Administrative Code, Title 14, Section 4307
No person shall remove, injure, deface or destroy any object of paleontological, archaeological, or historical interest or value.

California Code of Regulations, Section 1427
Recognizes that California's archaeological resources are endangered by urban development and population growth and by natural forces. The Legislature further finds and declares that these resources need to be preserved in order to illuminate and increase public knowledge concerning the historic and prehistoric past of California. Every person, not the owner thereof, who willfully injures, disfigures, defaces, or destroys any object or thing of archaeological or historical interest or value, whether situated on private lands or within any public park or place, is guilty of a misdemeanor. It is a misdemeanor to alter any archaeological evidence found in any cave, or to remove any materials from a cave.

Senate Concurrent Resolution Number 43
Requires all state agencies to cooperate with programs of archaeological survey and excavation, and to preserve known archaeological resources whenever this is reasonable.

Senate Concurrent Resolution Number 87 (Resolution Chapter 104, 1978)
Provides for the identification and protection of traditional Native American resource gathering sites on State land.

CALIFORNIA GOVERNMENT CODE

§ 6254 (r): California Public Records Act Exemption from Disclosure
Exempts from disclosure public records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

>>ADDED PER SENATE BILL 18 (2004): Sections 65092 through 65562.5<<

§ 65092: Public Notice to California Native American Indian Tribes
Includes California Native American tribe that is on the contact list maintained by the Native American Heritage Commission in the definition of “person” to whom notice of public hearings shall be sent by local governments.

§ 65351: Native American Involvement in General Plan Proposals
Requires local planning agencies to provide opportunities for involvement of California Native American tribes on the contact list maintained by the Native American Heritage Commission, and others, in the preparation or amendment of the general plan.
§ 65352: Referral of Action on General Plan Changes to Native Americans
Requires local planning agencies to refer proposed actions of general plan adoption or amendment to California Native American tribes on the contact list maintained by the Native American Heritage Commission, and others, with a 45 day opportunity for comment.

§ 65352.3-65352.4: Consultation with Native Americans on General Plan Proposals
Requires local governments to conduct meaningful consultation with California Native American tribes on the contact list maintained by the Native American Heritage Commission prior to the adoption or amendment of a city or county general plan for the purpose of protecting cultural places on lands affected by the proposal.

§ 65560, 65562.5: Consultation with Native Americans on Open Space
Includes protection of Native American cultural places as an acceptable designation of open space. Requires local governments to conduct meaningful consultation with California Native American tribes on the contact list maintained by the Native American Heritage Commission for the purpose of protecting cultural places located within open space.

§ 12600-12612: Attorney General-Environmental Action
Permits the Attorney General to intervene in any judicial or administrative proceeding concerning pollution or adverse effects on the environment. Authorizes the Attorney General to maintain an action for equitable relief in the name of the people of the state against any person for the protection of the natural resources of the state from pollution, impairment or destruction. Includes historic sites in the definition of natural resources. Authorizes the court to hold the defendant accountable for the protection of natural resources of the state from pollution, impairment or destruction.

§ 25373, 37361: City/County Protection of Historic Resources
Allows city and county legislative bodies to acquire property for the preservation or development of an historic landmark. Allows local legislative bodies to enact ordinances to provide special conditions or regulations for the protection or enhancement of places or objects of special historical or aesthetic interest or value.

§ 50280-50290: Mills Act (Historical Property Contracts)
Allows tax credits for the protection of a “qualified historical property” as determined by contracts between the private property owner and the local city or county governing body.

CALIFORNIA PUBLIC RESOURCES CODE

§ 5020.5: State Historical Resources Commission
Directs the State Historical Resources Commission to develop criteria and methods for determining the significance of archeological sites, for selecting the most significant sites, and for determining whether the most significant sites should be preserved intact or excavated and interpreted. Directs the commission to develop guidelines for the reasonable and feasible collection, storage, and display of archeological specimens.
§ 5020.7: Public promotion of historical resource protection
Directs public agencies to encourage owners of both identified and unidentified historical resources to perceive historical resources as assets and to elicit the support of owners and of the general public for the preservation of historic resources.

§ 5024: State-owned historical resources
Directs all state agencies to preserve and maintain all state-owned historical resources with the assistance of the State Historic Preservation Officer.

§ 5024.1: California Register of Historical Resources
Establishes the California Register of Historical Resources, duties of the committee overseeing the administration of the register, and criteria for inclusion of resources on the Register.

§ 5079.10-5079.15: California Heritage Fund
Establishes the California Heritage Fund in the State Treasury for implementation of laws providing for historical resource preservation.

§ 5079.20-5079.28: State acquisition of property to preserve historical resources
Defines methods by which the State Public Works Board may acquire property, on behalf of the (Treasury), for the purpose of meeting the policies and objectives of the California Register to protect and/or provide public access to cultural or historical resources.

§ 5079.40-5079.44: Grants for historical resource preservation
Directs the (Treasury) to provide competitive grants to public agencies and non-profit organizations for historical resource preservation projects, not to exceed $1,000,000 or 50% of project costs.

§ 5097.1-5097.6: Projects on State Lands
Requires state agencies proposing any major public works project on state lands to have plans reviewed by the Department of Parks and Recreation. Authorizes the Department of Parks and Recreation to conduct archeological site surveys for historical features on land affected by projects. Authorizes the state agencies to undertake surveys, excavation, or other operations on the state lands, or request such activities be done on their behalf by the Department of Parks and Recreation. Prohibits any archeological program from delaying state construction projects. Prohibits the removal, destruction, or defacement of any archeological or historical feature situated on public lands, except with the express permission of the public agency having jurisdiction over the lands.

§ 5097.9: Non-interference with Native American religious expression
Requires that public agencies, or private entities using, occupying or operating on public property under public permit, shall not interfere with free expression or exercise of Native American religion and shall not cause severe or irreparable damage to Native American sacred sites, except under special determined circumstances of public interest and necessity.
§ 5097.91-5097.94: Native American Heritage Commission (NAHC)
Creates the nine-member Native American Heritage Commission appointed by the governor and directs that at least five members shall be elders, traditional people, or spiritual leaders of California Native American tribes. Directs the commission to identify and catalog places of special religious or social significance to Native Americans, and known graves and cemeteries of Native Americans on private lands, and to perform other duties regarding the preservation and accessibility of sacred sites and burials and the disposition of Native American human remains and burial items.

§ 5097.95: State and local agency cooperation with the NAHC
Directs all state and local agencies to cooperate with the Native American Heritage Commission in transmitting to the commission copies of appropriate sections of all CEQA environmental impact reports related to property identified by the commission as of special religious significance to Native Americans, or which is reasonably foreseeable as such property.

§ 5097.96: The NAHC inventory of Native American sacred places
Authorizes the Native American Heritage Commission to prepare an inventory of sacred places located on public lands and to review the administrative and statutory protections accorded to such places. Directs the commission to submit a report to the Legislature recommending actions, as the commission deems necessary, to preserve such sacred places and to protect the free exercise of Native American religions.

§ 5097.97: NAHC investigations
Enables the Native American Heritage Commission to investigate the effect of proposed actions by a public agency if such action may cause severe or irreparable damage to a Native American sacred site located on public property or may bar appropriate access thereto by Native Americans. Authorizes the commission to recommend mitigation measures for consideration by the agency if the commission finds, after a public hearing, that the proposed action would result in such damage or interference. Allows the commission to ask the attorney general to take appropriate action if the agency fails to accept the mitigation measures.

§ 5097.98: NAHC identifying most likely descendant (MLD)
Requires the Native American Heritage Commission, upon notification by a county coroner, to notify the most likely descendants regarding the discovery of Native American human remains. Enables the descendants, within 24 hours of notification by the commission, to inspect the site of the discovery of Native American human remains and to recommend to the landowner or the person responsible for the excavation work the means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. Requires the owner of the land upon which Native American human remains were discovered, in the event that no descendant is identified, or the descendant fails to make a recommendation for disposition, or the land owner rejects the recommendation of the descendant, to reinter the remains and burial items with appropriate dignity on the property in a location not subject to further disturbance.
§ 5097.99: Prohibition of possession of Native American artifacts and remains
Prohibits acquisition or possession of Native American artifacts or human remains taken from a Native American grave or cairn after January 1, 1984, except in accordance with an agreement reached with the Native American Heritage Commission.

§ 5097.991: Repatriation of Native American remains
States that the policy of the State is that Native American remains and associated grave artifacts shall be repatriated.

§ 5097.993-5097.994: Native American Historic Resource Protection Act
Establishes as a misdemeanor, punishable by up to a $10,000 fine, or both fine and imprisonment, the unlawful and malicious excavation, removal or destruction of Native American archeological or historic sites on public lands or on private lands. Exempts certain legal acts by landowners. Limits a civil penalty to $50,000 per violation.

§ 21083.2: California Environmental Quality Act- Archeological Resources
Directs the lead agency on any project undertaken, assisted, or permitted by the State to include in its environmental impact report for the project a determination of the project's effect on unique archeological resources. Defines unique archeological resource. Enables a lead agency to require an applicant to make reasonable effort to preserve or mitigate impacts to any affected unique archeological resource. Sets requirements for the applicant to provide payment to cover costs of mitigation. Restricts excavation as a mitigation measure.

§ 21084.1: California Environmental Quality Act- Historic Resources
Establishes that adverse effects on an historical resource qualities constitute a significant effect on the environment. Defines historical resource.

CALIFORNIA PENAL CODE

§ 622: Destruction of Sites
Establishes as a misdemeanor the willful injury, disfiguration, defacement, or destruction of any object or thing of archeological or historical interest or value, whether situated on private or public lands.

§ 623: Destruction of Caves (a)(2)
Establishes as a misdemeanor the disturbing or alteration of any archeological evidence in any cave without the written permission of the owner of the cave, punishable by up to one year in the county jail or a fine not to exceed $1,000, or both.
§ 7050.5 Disturbance of Human Remains
Declares the intentional disturbance, mutilation or removal of interred human remains as a misdemeanor crime. Requires that further excavation or disturbance of land must cease upon discovery of human remains outside of a dedicated cemetery, until a county coroner makes a report. Requires a county coroner to contact the Native American Heritage Commission within 24 hours if the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes the remains to be those of a Native American.

§ 7051 Removal of human remains
Establishes removal of human remains from interment, or from a place of storage while awaiting interment or cremation, with the intent to sell them or to dissect them with malice or wantonness as a public offense punishable by imprisonment in a state prison.

§ 7052: Felony offenses related to human remains
States that willing mutilation of, disinterment of, removal from a place of interment, or the sexual penetration of or sexual contact with any remains known to be human are felony offenses.

§ 7054 Depositing human remains outside of cemetery
Exempts the reburial of Native American remains pursuant to Section 5097.94 from definition of a misdemeanor.

§ 8010-8011: California Native American Graves Protection and Repatriation Act
Establishes a state repatriation policy intent that is consistent with and facilitates implementation of the federal Native American Graves Protection and Repatriation Act. Strives to ensure that all California Indian human remains and cultural items are treated with dignity and respect. Encourages voluntary disclosure and return of remains and cultural items by publicly funded agencies and museums in California. States an intent for the state to provide mechanisms for aiding California Indian tribes, including non-federally recognized tribes, in filing repatriation claims and getting responses to those claims.
California Environmental Quality Act (CEQA)

Historical Resources
# TABLE OF CONTENTS

**Introduction** ................................................................. 5

Questions and Answers .......................................................... 7
  - When does CEQA apply? ................................................. 7
  - What is the California Register and what does it have to do with CEQA? ..... 7
  - Are archeological sites part of the California Register? ..................... 7
  - What is "substantial adverse change" to an historical resource? .......... 8
  - How can "substantial adverse change" be avoided or mitigated? .......... 8
  - What are "exemptions" under CEQA and how are they used? .......... 9
  - What are local CEQA Guidelines? ....................................... 10
  - Who ensures CEQA is being followed properly? ........................... 10
  - How should a citizen approach advocating for historical resources under CEQA? ... 10
  - What information is useful to have on hand when contacting OHP about a CEQA project? .......................... 14

**CEQA Information Sources** ........................................... 15
  - CEQA Statute and Guidelines ........................................ 15
  - Technical Assistance Publications and General Information ........... 16
  - Recent Case Law and CEQA Issues .................................. 16
  - Historic Preservation Advocacy ........................................ 17

**Appendix A:** Form for Collection of Information about a Project .... 19

**Appendix B:** State Codes/Regulations Related to CEQA and Historical Resources ... 21
  - California Public Resources Code ..................................... 21
  - California Code of Regulations, Title 14, Chapter 3 .................... 23

**Appendix C:** California Register of Historical Resources .................. 30
  - Eligibility Criteria .......................................................... 31
  - Integrity ............................................................................. 31
  - Special Considerations ..................................................... 32

**Appendix D:** Secretary of the Interior's Standards for Professionals in Historic Preservation ................................................................. 33
  - History ............................................................................... 33
  - Archeology ........................................................................ 34
  - Architectural History ....................................................... 34
  - Architecture ....................................................................... 34
  - Historic Architecture ...................................................... 34

**Appendix E:** Secretary of the Interior's Standards for the Treatment of Historic Properties ................................................................. 36
  - Four Treatment Approaches ................................................ 36
Choosing an Appropriate Treatment ....................................................................... 37
Standards for Preservation .................................................................................... 38
Standards for Rehabilitation .................................................................................. 39
Standards for Restoration ....................................................................................... 40
Standards for Reconstruction ................................................................................ 41

Appendix F: A Guide to Planning In California ..................................................... 43
Introduction .............................................................................................................. 43
State and Local Planning ......................................................................................... 44
The General Plan ....................................................................................................... 45
Zoning ....................................................................................................................... 47
Subdivisions .............................................................................................................. 49
Other Ordinances and Regulations ......................................................................... 50
Annexation and Incorporation ................................................................................ 50
The California Environmental Quality Act (CEQA) ........................................... 51
Glossary ..................................................................................................................... 52
Bibliography: A Few Good Books ......................................................................... 57

Appendix G: Information Center Contact list ......................................................... 59

Appendix H: City of San Diego Sample Information ............................................ 61

Appendix I: State Clearinghouse Handbook ......................................................... 74
The California Environmental Quality Act (CEQA – pronounced see’ kwa) is the principal statute mandating environmental assessment of projects in California. The purpose of CEQA is to evaluate whether a proposed project may have an adverse effect on the environment and, if so, if that effect can be reduced or eliminated by pursuing an alternative course of action or through mitigation. CEQA is part of the Public Resources Code (PRC), Sections 21000 et seq.

The CEQA Guidelines are the regulations that govern the implementation of CEQA. The CEQA Guidelines are codified in the California Code of Regulations (CCR), Title 14, Chapter 3, Sections 15000 et seq. and are binding on state and local public agencies.

The basic goal of CEQA is to develop and maintain a high-quality environment now and in the future, while the specific goals of CEQA are for California’s public agencies to:

1. Identify the significant environmental effects of their actions; and, either
2. Avoid those significant environmental effects, where feasible; or
3. Mitigate those significant environmental effects, where feasible.

CEQA applies to "projects" proposed to be undertaken or requiring approval by state and local public agencies. "Projects" are activities which have the potential to have a physical impact on the environment and may include the enactment of zoning ordinances, the issuance of conditional use permits and variances and the approval of tentative subdivision maps.

Where a project requires approvals from more than one public agency, CEQA requires one of these public agencies to serve as the "lead agency." A "lead agency" must complete the environmental review process required by CEQA.

The most basic steps of the environmental review process are:

1. Determine if the activity is a "project" subject to CEQA;
2. Determine if the "project" is exempt from CEQA;
3. Perform an Initial Study to identify the environmental impacts of the project and determine whether the identified impacts are "significant". Based on its findings of "significance", the lead agency prepares one of the following environmental review documents:
   - Negative Declaration if it finds no "significant" impacts;
   - Mitigated Negative Declaration if it finds "significant" impacts but revises the project to avoid or mitigate those significant impacts;
   - Environmental Impact Report (EIR) if it finds "significant" impacts.

The purpose of an EIR is to provide State and local agencies and the general public with detailed information on the potentially significant environmental effects that a
proposed project is likely to have, to list ways that the significant environmental effects may be minimized and to indicate alternatives to the project.

Throughout this handout you will find references to various sections of the California Public Resources Code and the Code of Regulations. The various State statutes and regulations can all be accessed on-line at the following websites:
Statutes - http://www.leginfo.ca.gov/calaw.html
Regulations - http://ccr.oal.ca.gov/

This handout is intended to merely illustrate the process outlined in CEQA statute and guidelines relative to historical and cultural resources. These materials on CEQA and other laws are offered by the State Office of Historic Preservation for informational purposes only. This information does not have the force of law or regulation. This handout should not be cited in legal briefs as the authority for any proposition. In the case of discrepancies between the information provided in this handout and the CEQA statute or guidelines, the language of the CEQA statute and Guidelines (PRC § 21000 et seq. and 14 CCR § 15000 et seq.) is controlling. Information contained in this handout does not offer nor constitute legal advice. You should contact an attorney for technical guidance on current legal requirements.
QUESTIONS AND ANSWERS

When does CEQA apply?

Resources listed in, or determined to be eligible for listing in, the California Register are resources that must be given consideration in the CEQA process.

All projects undertaken by a public agency are subject to CEQA. This includes projects undertaken by any state or local agency, any special district (e.g., a school district), and any public college or university.

CEQA applies to discretionary projects undertaken by private parties. A discretionary project is one that requires the exercise of judgement or deliberation by a public agency in determining whether the project will be approved, or if a permit will be issued. Some common discretionary decisions include placing conditions on the issuance of a permit, delaying demolition to explore alternatives, or reviewing the design of a proposed project. Aside from decisions pertaining to a project that will have a direct physical impact on the environment, CEQA also applies to decisions that could lead to indirect impacts, such as making changes to local codes, policies, and general and specific plans. Judgement or deliberation may be exercised by the staff of a permitting agency or by a board, commission, or elected body.

CEQA does not apply to ministerial projects. A ministerial project is one that requires only conformance with a fixed standard or objective measurement and requires little or no personal judgment by a public official as to the wisdom or manner of carrying out the project. Generally ministerial permits require a public official to determine only that the project conforms with applicable zoning and building code requirements and that applicable fees have been paid. Some examples of projects that are generally ministerial include roof replacements, interior alterations to residences, and landscaping changes.

For questions about what types of projects are discretionary and ministerial within your community, you must contact your local government; usually the local Planning Department handles such issues.

What is the California Register and what does it have to do with CEQA?

Historical resources are recognized as part of the environment under CEQA (PRC § 21002(b), 21083.2, and 21084.1). The California Register is an authoritative guide to the state’s historical resources and to which properties are considered significant for purposes of CEQA.
The California Register includes resources listed in or formally determined eligible for listing in the National Register of Historic Places, as well as some California State Landmarks and Points of Historical Interest. Properties of local significance that have been designated under a local preservation ordinance (local landmarks or landmark districts) or that have been identified in a local historical resources inventory may be eligible for listing in the California Register and are presumed to be significant resources for purposes of CEQA unless a preponderance of evidence indicates otherwise (PRC § 5024.1, 14 CCR § 4850).

The California Register statute (PRC § 5024.1) and regulations (14 CCR § 4850 et seq.) require that at the time a local jurisdiction nominates an historic resources survey for listing in the California Register, the survey must be updated if it is more than five years old. This is to ensure that a nominated survey is as accurate as possible at the time it is listed in the California Register. However, this does not mean that resources identified in a survey that is more than five years old need not be considered "historical resources" for purposes of CEQA. Unless a resource listed in a survey has been demolished, lost substantial integrity, or there is a preponderance of evidence indicating that it is otherwise not eligible for listing, a lead agency should consider the resource to be potentially eligible for the California Register.

However, a resource does not need to have been identified previously either through listing or survey to be considered significant under CEQA. In addition to assessing whether historical resources potentially impacted by a proposed project are listed or have been identified in a survey process, lead agencies have a responsibility to evaluate them against the California Register criteria prior to making a finding as to a proposed project's impacts to historical resources (PRC § 21084.1, 14 CCR § 15064.5(3)).

Are archeological sites part of the California Register?

An archeological site may be considered an historical resource if it is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military or cultural annals of California (PRC § 5020.1(j)) or if it meets the criteria for listing on the California Register (14 CCR § 4850).

CEQA provides somewhat conflicting direction regarding the evaluation and treatment of archeological sites. The most recent amendments to the CEQA Guidelines try to resolve this ambiguity by directing that lead agencies should first evaluate an archeological site to determine if it meets the criteria for listing in the California Register. If an archeological site is an historical resource (i.e., listed or eligible for listing in the California Register) potential adverse impacts to it must be considered, just as for any other historical resource (PRC § 21084.1 and 21083.2(l)).
If an archeological site is not an historical resource, but meets the definition of a "unique archeological resource" as defined in PRC § 21083.2, then it should be treated in accordance with the provisions of that section.

What is "substantial adverse change" to an historical resource?

Substantial adverse change includes demolition, destruction, relocation, or alteration such that the significance of an historical resource would be impaired (PRC § 5020.1(q)).

While demolition and destruction are fairly obvious significant impacts, it is more difficult to assess when change, alteration, or relocation crosses the threshold of substantial adverse change. The CEQA Guidelines provide that a project that demolishes or alters those physical characteristics of an historical resource that convey its historical significance (i.e., its character-defining features) can be considered to materially impair the resource's significance.

How can "substantial adverse change" be avoided or mitigated?

A project that has been determined to conform with the Secretary of the Interior's Standards for the Treatment of Historic Properties can generally be considered to be a project that will not cause a significant impact (14 CCR § 15126.4(b)(1)). In fact, in most cases if a project meets the Secretary of Interior's Standards for the Treatment of Historic Properties it can be considered categorically exempt from CEQA (14 CCR § 15331).

Mitigation of significant impacts must lessen or eliminate the physical impact that the project will have on the historical resource. This is often accomplished through redesign of a project to eliminate objectionable or damaging aspects of the project (e.g., retaining rather than removing a character-defining feature, reducing the size or massing of a proposed addition, or relocating a structure outside the boundaries of an archeological site).

Relocation of an historical resource may constitute an adverse impact to the resource. However, in situations where relocation is the only feasible alternative to demolition, relocation may mitigate below a level of significance provided that the new location is compatible with the original character and use of the historical resource and the resource retains its eligibility for listing on the California Register (14 CCR § 4852(d)(1)).

In most cases the use of drawings, photographs, and/or displays does not mitigate the physical impact on the environment caused by demolition or destruction of an historical resource (14 CCR § 15126.4(b)). However, CEQA requires that all feasible mitigation be undertaken even if it does not mitigate below a level of significance. In this context,
recordation serves a legitimate archival purpose. The level of documentation required as a mitigation should be proportionate with the level of significance of the resource.

Avoidance and preservation in place are the preferable forms of mitigation for archeological sites. When avoidance is infeasible, a data recovery plan should be prepared which adequately provides for recovering scientifically consequential information from the site. Studies and reports resulting from excavations must be deposited with the California Historical Resources Regional Information Center (see list in Appendix G). Merely recovering artifacts and storing them does not mitigate impacts below a level of significance.

What are “exemptions” under CEQA and how are they used?

There are basically two types of exemptions under CEQA: statutory and categorical. Statutory exemptions are projects specifically excluded from CEQA consideration as defined by the State Legislature. These exemptions are delineated in PRC § 21080 et seq. A statutory exemption applies to any given project that falls under its definition, regardless of the project’s potential impacts to the environment. However, it is important to note that any CEQA exemption applies only to CEQA and not, of course, to any other state, local or federal laws that may be applicable to a proposed project.

Categorical exemptions operate very differently from statutory exemptions. Categorical exemptions are made up of classes of projects that generally are considered not to have potential impacts on the environment. Categorical exemptions are identified by the State Resources Agency and are defined in the CEQA Guidelines (14 CCR § 15300-15331). Unlike statutory exemptions, categorical exemptions are not allowed to be used for projects that may cause a substantial adverse change in the significance of an historical resource (14 CCR § 15300.2(f)). Therefore, lead agencies must first determine if the project has the potential to impact historical resources and if those impacts could be adverse prior to determining if a categorical exemption may be utilized for any given project.

If it is determined that a statutory or categorical exemption could be used for a project, the lead agency may produce a notice of exemption, but is not required to do so. If a member of the public feels that a categorical exemption is being improperly used because the project could have a significant adverse impact on historical resources, it is very important that any appeals be requested and comments be filed making the case for the exemption's impropriety. If a notice of exemption is filed, a 35-day statute of limitations will begin on the day the project is approved. If a notice is not filed, a 180-day statute of limitations will apply. As a result, lead agencies are encouraged to file notices of exemption to limit the possibility of legal challenge.
What are local CEQA Guidelines?

Public agencies are required to adopt implementing procedures for administering their responsibilities under CEQA. These procedures include provisions on how the agency will process environmental documents and provide for adequate comment, time periods for review, and lists of permits that are ministerial actions and projects that are considered categorically exempt. Agency procedures should be updated within 120 days after the CEQA Guidelines are revised. The most recent amendments to the CEQA Guidelines occurred in November 1998 and included specific consideration of historical resources. An agency's adopted procedures are a public document (14 CCR § 15022).

Additionally, local governments will often produce materials for distribution to the public explaining the local CEQA process. The OHP strongly recommends the creation of such documents to further aid the public in understanding how CEQA is implemented within each local government's jurisdiction. Often a local historic preservation ordinance will also come into play in that process. In such instances, the OHP further recommends that the local ordinance procedures be explained in a straightforward public document. The materials distributed by the City of San Diego are included in this booklet in Appendix H as an example.

Who ensures CEQA is being followed properly?

In a way, the people of California bear this responsibility. But, ultimately, it is the judicial system that ensures public agencies are fulfilling their obligations under CEQA. There is no CEQA “police” agency as many members of the public mistakenly assume. Rather it is any individual or organization's right to pursue litigation against a public agency that is believed to have violated its CEQA responsibilities.

Although the OHP can, and often does, comment on documents prepared for CEQA purposes (or the lack thereof), it is important that the public be aware that such comments are merely advisory and do not carry the force of law. Comments from state agencies and other organizations with proven professional qualifications and experience in a given subject can, however, provide valuable assistance to decision-makers as well as provide substantive arguments for consideration by a judge during CEQA litigation.

How should a citizen approach advocating for historical resources under CEQA?

1. Familiarize yourself with CEQA. CEQA is a complex environmental consideration law, but the basics of it can be mastered with some concerted education. There is a large amount of information available on the subject of CEQA. Please refer to the following section of this publication for some suggested information sources.
Additionally, contact your local government and request a copy of their local CEQA guidelines as well as any public informational handouts they may have available.

Finally, familiarize yourself with the local codes related to historical resources. Find out if there is a local historic preservation ordinance that would serve to provide protection for the historical resource in question. If so, find out how the review process under that ordinance works. Research ways you can make your opinion heard through that process as well as the general CEQA environmental review process. Usually local ordinances will allow for greater protection for historical resources than CEQA's requirement of consideration. Therefore this is a very important step.

It cannot be emphasized enough the importance of educating yourself prior to an actual preservation emergency arising. CEQA puts in place very strict time controls on comment periods and statutes of limitations on litigation. These controls do not allow much time to learn CEQA in the heat of an impending project. It is far, far better to have at least a cursory understanding of CEQA and local codes related to historical resources well in advance of having to take on a preservation advocacy battle.

2. If and when there is an "action" or a "project" that would invoke CEQA, you should contact the local government undertaking the action. First rule, don't give up if you get shuffled from person to person. Stick with it. Ultimately, you want to get to the person in charge of the project (usually that's a planner in the Planning Department, but it might also be someone with Parks and Recreation, Public Works, Building and Safety, etc.). When you get to the right person, ask where they are in terms of CEQA compliance (using an exemption, preparing initial study or preparing CEQA document).

If the lead agency is using an exemption, ask if they have filed or intend to file a notice of exemption. If so, obtain a copy of it and move to step 3. If not, and you question the use of the exemption, investigate how you go about requesting an appeal of the decision and do so. Additionally, contact OHP to discuss submitting written comments. See step 4 for further information on ensuring your right to initiate litigation.

Once the initial study is finished, the lead agency should know what type of CEQA document they're going to prepare (negative declaration, , mitigated negative declaration, or environmental impact report). If the document has already been prepared, ask to have a copy mailed to you or ask where you can pick up a copy. If the document has not been prepared yet, ask to be placed on mailing list to receive a copy when it's done. If they don't keep a mailing list, then you need to keep an eye on the public postings board (usually at the Clerk's office) for when it does come out and then get a copy (some local governments also post on the internet, so you don't have to go in person or call in every week).
If the local government says they didn't do a CEQA document, ask why. Then call OHP to discuss where to go from there.

If the local government says that they prepared a CEQA document but the comment period on it is closed then there may not be much you can do (see litigation information in step 4); still, ask to have a copy of it sent to you. Then call OHP to discuss how best to proceed.

3. When you get a copy of the document, read it and call OHP to discuss. Then prepare your comments (don't daily, comment periods are usually for 45 days, but are sometimes only 30 days). Also, contact OHP as soon as possible to inform us when a document has come out so we can get a copy and comment on it as well. OHP does its best to respond to all citizens' requests for comments on CEQA documents. However, we cannot guarantee that we will be able to comment on a document with only a few days notice. Therefore, contacting us as soon as possible at the beginning of a comment period on a document, or, even better, prior to the release of the document, will help ensure that we are able to provide substantive written comments within the allotted time period.

4. Submit your comments and attend public hearings. Make sure all your concerns are on record (if the decision does go to litigation, the only thing the judge will be looking at is what's in the public record). Appeal any decision that doesn't go your way (you must exhaust all administrative remedies or your lawsuit—if it comes to that—won't be heard). Even if you do not intend to or want to initiate litigation, don't let the local government know that. You need to appear ready to take the matter to court, because often that's the only thing that will get their attention. If you know in advance that litigation will probably result, you should strongly consider hiring an attorney as early in the process as possible. An attorney will probably be able to provide much stronger arguments in commenting on the adequacy of a CEQA document than you as a member of the public would, and he or she can help ensure that your right to initiate litigation is protected.

5. Often you will find that CEQA doesn't provide you with a mechanism to protect a particular historical resource. This may be the case for a number of reasons, including that the project is private and ministerial (i.e., involves no discretion on the part of a public agency), is subject to a statutory exemption, or has been approved as a result of CEQA documents already having been prepared and circulated prior to your learning of the project. In these instances, you may find that a public relations campaign is your only recourse. In such situations, do not give up hope. There are many examples of citizens utilizing such means as the media, informational mailings and meetings, and dialogue with project developers to halt or alter a project even in the absence of legal remedies. This is an especially useful course of action when the proposed project involves a business that needs to build or retain a positive image in the minds of citizens in the local community in order to succeed.
What information is useful to have on hand when contacting OHP about a CEQA project?

Information about the project:
- Where is the project located? City, county, street address.
- Is there a project name? Often having the project name will make it easier for OHP to find out more information about the project when we contact the lead agency.
- What does the project propose to do? Demolish, alter, relocate an historical resource? Build housing, commercial offices, retail?

Information about the historic property (or properties) potentially impacted:
- Where is the property located? City, county, and a street address
- What is its name? If the property has an historic name, or even what it is generally known as in the local community, it may be easier for us to locate information on it.
- What do you know about the property? Why do you think it's significant?

Lead agency contact information:
- Who is the lead agency for the project? That is, who is undertaking the project (if it's a public project) or permitting it (if it's a private project)? Ideally this should include both the name of the public agency as well as the department or division handling the project.
- Can you obtain a specific contact person's name? Do you have a phone number and/or email address for him or her?

Information on the development of the CEQA process thus far:
- What has the lead agency told you about the environmental review process so far?
- Do they know what type of CEQA document they're going to prepare?
- Have they already prepared one, and, if so, what is the public comment period on it?

Please refer to Appendix A for a sample form you can use to collect this information.
CEQA INFORMATION SOURCES

CEQA Statute and Guidelines

California Resources Agency

The CEQA Statutes and Guidelines with Office of Planning and Research (OPR) commentary are available to download in Adobe Acrobat (PDF) format at the California Environmental Resources Evaluation System (CERES) website at http://ceres.ca.gov/ceqa. The Secretary of the Interior’s Standards for Historic Preservation are also available at this website.

Governor’s Office of Planning and Research


Available through State Department of General Services, Publications Section PO Box 1015, North Highlands CA 95660. Orders should include title, stock number (7540-931-1022-0), number of copies, and remittance ($18.00 per copy, includes UPS delivery). Make checks payable to State of California. No phone orders accepted.

Consulting Engineers and Land Surveyors of California (CELSOC)

California Environmental Quality Act/CEQA Guidelines

This handy pocket edition is updated annually. Cost is $6.50 for CELSOC members, $9.50 for public agencies, and $19.50 for non-members. Shipping is an additional $3.00 and California residents must include sales tax at 7.25%. Available through CELSOC, 1303 J St, Ste 370, Sacramento CA 95814, phone: (916) 441-7991, fax: (916) 441-6312, email: staff@celsoc.org, website: http://www.celsoc.org.

State Office of Historic Preservation


This complete compilation of all state codes, regulations and executive orders pertaining to historic preservation is available at no cost through the State Office of Historic Preservation, PO Box 942896, Sacramento CA 94296-0001, phone: (916) 653-6624, fax: (916) 653-9824, email: calshpo@ohp.parks.ca.gov. It can be found on the internet at http://ohp.parks.ca.gov/register/ts10ca.pdf.
Technical Assistance Publications and General Information

Governor's Office of Planning and Research

*CEQA and Historical Resources*
*CEQA and Archaeological Resources*
*Circulation and Notice under CEQA*
*Thresholds of Significance: Criteria for Defining Environmental Significance*

This useful series of publications provides assistance in interpreting the CEQA statutes, guidelines and case law. It is available at no cost at http://ceres.ca.gov/ceqa or through the State Office of Historic Preservation (first two publications only) at the address and contact information above.

Solano Press


A very handy guide, which is updated annually, to preparing and evaluating CEQA documents and understanding the CEQA process. Available through Solano Press Books, PO Box 773, Point Arena CA 95468, phone: (800) 931-9373, fax: (707) 884-4109, email: spbooks@solano.com, website: http://www.solano.com.

California Preservation Foundation


Recent Case Law and CEQA Issues

Solano Press

This publication is updated annually and provides general information as well as analysis of CEQA case law. Available through Solano Press Books at the address and contact information above.

**California Resources Agency**


**Historic Preservation Advocacy**

**National Trust for Historic Preservation (NTHP)**

A look at the various laws and regulations that protect historic resources, as well as laws governing nonprofit organizations and museum properties.
Non-member $10.00 / NTHP member $9.00 / NT Forum $7.50

*Organizing for Change*
Five in-depth case studies on how citizens worked through the political process to change preservation planning decisions.
Non-member $6.00 / NTHP member $5.40 / NT Forum $4.50

*Rescuing Historic Resources: How to Respond to a Preservation Emergency*
The steps to take when faced with a preservation crisis.
Non-member $6.00 / NTHP member $5.40 / NT Forum $4.50

The above titles represent only a few of the many publications the National Trust has available in its series of Historic Preservation Information Booklets. Each of these publications as well as other books, videos, and journals can be purchased through the National Trust's website at http://www.nthp.org or by calling (202) 588-6189.

**California Preservation Foundation**

This guide is based on CPF's popular 1992 workshop series. Chapters by statewide experts provide valuable overviews of the development process, real estate economics, tax credits, easements, property tax incentives, the State Historical Building Code, CEQA and more. $12

*Avoiding the Bite: Strategies for Adopting and Retaining Local Preservation Programs*, edited by Lisa Foster (Oakland: California Preservation Foundation, 1994).
This book contains presentations made during CPF's 1994 workshops on preservation commissions. Includes sections on making allies in City Hall and with Redevelopment staff, maintaining programs in times of budget cuts, building public and political support for local preservation programs, and creating an adoptable ordinance. $12

Both publications, as well as many others dealing with other preservation subjects, are available through the California Preservation Foundation, 1611 Telegraph Avenue, Suite 820, Oakland CA 94612, phone (510)763-0972, fax (510) 763-4724, email: cpf_office@californiapreservation.org, website: http://www.californiapreservation.org.
APPENDIX A: FORM FOR COLLECTION OF INFORMATION ABOUT A PROJECT

The form that follows on the next page is intended to allow you to collect and have readily available pertinent information about a project both for your own personal use as well as for instances when you choose to contact OHP. Although it can readily be argued that collecting even more information is often useful, the attempt herein was to create an easily readable one-page form that can be quickly referenced for particularly pertinent information about a project.
### Project Information

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<th>Project Name</th>
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<td>City/County Address (if applicable)</td>
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<td>Project Description</td>
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### Historical Resources Information

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<td>City/County</td>
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<td>Property Description/Significance</td>
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### Lead Agency Information

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<td>Contact Person</td>
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<td>Phone/Fax Email</td>
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<td>Mailing Address</td>
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<td>Other Agencies Involved (if applicable)</td>
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### CEQA Process

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<td>Comment Period</td>
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<td>Notes on Process</td>
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### General Notes

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APPENDIX B: STATE CODES AND REGULATIONS RELATED TO CEQA AND HISTORICAL RESOURCES

California Public Resources Code

21083.2. Archeological Resources.
(a) As part of the determination made pursuant to Section 21080.1, the lead agency shall determine whether the project may have a significant effect on archaeological resources. If the lead agency determines that the project may have a significant effect on unique archaeological resources, the environmental impact report shall address the issue of those resources. An environmental impact report, if otherwise necessary, shall not address the issue of nonunique archaeological resources. A negative declaration shall be issued with respect to a project if, but for the issue of nonunique archaeological resources, the negative declaration would be otherwise issued.
(b) If it can be demonstrated that a project will cause damage to a unique archaeological resource, the lead agency may require reasonable efforts to be made to permit any or all of these resources to be preserved in place or left in an undisturbed state. Examples of that treatment, in no order of preference, may include, but are not limited to, any of the following:
(1) Planning construction to avoid archaeological sites.
(2) Deeding archaeological sites into permanent conservation easements.
(3) Capping or covering archaeological sites with a layer of soil before building on the sites.
(4) Planning parks, greenspace, or other open space to incorporate archaeological sites.
(c) To the extent that unique archaeological resources are not preserved in place or not left in an undisturbed state, mitigation measures shall be required as provided in this subdivision. The project applicant shall provide a guarantee to the lead agency to pay one-half the estimated cost of mitigating the significant effects of the project on unique archaeological resources. In determining payment, the lead agency shall give due consideration to the in-kind value of project design or expenditures that are intended to permit any or all archaeological resources or California Native American culturally significant sites to be preserved in place or left in an undisturbed state. When a final decision is made to carry out or approve the project, the lead agency shall, if necessary, reduce the specified mitigation measures to those which can be funded with the money guaranteed by the project applicant plus the money voluntarily guaranteed by any other person or persons for those mitigation purposes. In order to allow time for interested persons to provide the funding guarantee referred to in this subdivision, a final decision to carry out or approve a project shall not occur sooner than 60 days after completion of the recommended special environmental impact report required by this section.
(d) Excavation as mitigation shall be restricted to those parts of the unique archaeological resource that would be damaged or destroyed by the project. Excavation as mitigation shall not be required for a unique archaeological resource if the lead agency determines that testing or studies already completed have adequately
recovered the scientifically consequential information from and about the resource, if this determination is documented in the environmental impact report.

(e) In no event shall the amount paid by a project applicant for mitigation measures required pursuant to subdivision (c) exceed the following amounts:

(1) An amount equal to one-half of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a commercial or industrial project.

(2) An amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of a housing project consisting of a single unit.

(3) If a housing project consists of more than a single unit, an amount equal to three-fourths of 1 percent of the projected cost of the project for mitigation measures undertaken within the site boundaries of the project for the first unit plus the sum of the following:

(A) Two hundred dollars ($200) per unit for any of the next 99 units.

(B) One hundred fifty dollars ($150) per unit for any of the next 400 units.

(C) One hundred dollars ($100) per unit in excess of 500 units.

(f) Unless special or unusual circumstances warrant an exception, the field excavation phase of an approved mitigation plan shall be completed within 90 days after final approval necessary to implement the physical development of the project or, if a phased project, in connection with the phased portion to which the specific mitigation measures are applicable. However, the project applicant may extend that period if he or she so elects. Nothing in this section shall nullify protections for Indian cemeteries under any other provision of law.

(g) As used in this section, "unique archaeological resource" means an archaeological artifact, object, or site about which it can be clearly demonstrated that, without merely adding to the current body of knowledge, there is a high probability that it meets any of the following criteria:

(1) Contains information needed to answer important scientific research questions and that there is a demonstrable public interest in that information.

(2) Has a special and particular quality such as being the oldest of its type or the best available example of its type.

(3) Is directly associated with a scientifically recognized important prehistoric or historic event or person.

(h) As used in this section, "nonunique archaeological resource" means an archaeological artifact, object, or site which does not meet the criteria in subdivision (g). A nonunique archaeological resource need be given no further consideration, other than the simple recording of its existence by the lead agency if it so elects.

(i) As part of the objectives, criteria, and procedures required by Section 21082 or as part of conditions imposed for mitigation, a lead agency may make provisions for archaeological sites accidentally discovered during construction. These provisions may include an immediate evaluation of the find. If the find is determined to be a unique archaeological resource, contingency funding and a time allotment sufficient to allow recovering an archaeological sample or to employ one of the avoidance measures may be required under the provisions set forth in this section. Construction work may continue on other parts of the building site while archaeological mitigation takes place.
(j) This section does not apply to any project described in subdivision (a) or (b) of Section 21065 if the lead agency elects to comply with all other applicable provisions of this division. This section does not apply to any project described in subdivision (c) of Section 21065 if the applicant and the lead agency jointly elect to comply with all other applicable provisions of this division.

(k) Any additional costs to any local agency as a result of complying with this section with respect to a project of other than a public agency shall be borne by the project applicant.

(l) Nothing in this section is intended to affect or modify the requirements of Section 21084 or 21084.1.

21084. Guidelines shall list classes of projects exempt from Act.

(e) No project that may cause a substantial adverse change in the significance of an historical resource, as specified in Section 21084.1, shall be exempted from this division pursuant to subdivision (a).

21084.1. Historical Resources Guidelines.
A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. For purposes of this section, an historical resource is a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources. Historical resources included in a local register of historical resources, as defined in subdivision (k) of Section 5020.1, or deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1, are presumed to be historically or culturally significant for purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. The fact that a resource is not listed in, or determined to be eligible for listing in, the California Register of Historical Resources, not included in a local register of historical resources, or not deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1 shall not preclude a lead agency from determining whether the resource may be an historical resource for purposes of this section.

California Code of Regulations, Title 14, Chapter 3

15064.5. Determining the Significance of Impacts to Archeological and Historical Resources
(a) For purposes of this section, the term "historical resources" shall include the following:
(1) A resource listed in, or determined to be eligible by the State Historical Resources Commission, for listing in the California Register of Historical Resources (Pub. Res. Code SS5024.1, Title 14 CCR, Section 4850 et seq.).
(2) A resource included in a local register of historical resources, as defined in section 5020.1(k) of the Public Resources Code or identified as significant in an historical resource survey meeting the requirements section 5024.1(g) of the Public Resources Code, shall be presumed to be historically or culturally significant. Public agencies must
treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.

(3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code SS5024.1, Title 14 CCR, Section 4852) including the following:

(A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
(B) Is associated with the lives of persons important in our past;
(C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
(D) Has yielded, or may be likely to yield, information important in prehistory or history.

(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1 or 5024.1.

(b) A project with an effect that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.

1. Substantial adverse change in the significance of an historical resource means physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired.

2. The significance of an historical resource is materially impaired when a project:
   (A) Demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for, inclusion in the California Register of Historical Resources; or
   (B) Demolishes or materially alters in an adverse manner those physical characteristics that account for its inclusion in a local register of historical resources pursuant to section 5020.1(k) of the Public Resources Code or its identification in an historical resources survey meeting the requirements of section 5024.1(g) of the Public Resources Code, unless the public agency reviewing the effects of the project establishes by a preponderance of evidence that the resource is not historically or culturally significant; or
(C) Demolishes or materially alters in an adverse manner those physical characteristics of a historical resource that convey its historical significance and that justify its eligibility for inclusion in the California Register of Historical Resources as determined by a lead agency for purposes of CEQA.

(3) Generally, a project that follows the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on the historical resource.

(4) A lead agency shall identify potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource. The lead agency shall ensure that any adopted measures to mitigate or avoid significant adverse changes are fully enforceable through permit conditions, agreements, or other measures.

(5) When a project will affect state-owned historical resources, as described in Public Resources Code Section 5024, and the lead agency is a state agency, the lead agency shall consult with the State Historic Preservation Officer as provided in Public Resources Code Section 5024.5. Consultation should be coordinated in a timely fashion with the preparation of environmental documents.

(c) CEQA applies to effects on archaeological sites.

(1) When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, as defined in subsection (a).

(2) If a lead agency determines that the archaeological site is an historical resource, it shall refer to the provisions of Section 21084.1 of the Public Resources Code, and this section, Section 15126.4 of the Guidelines, and the limits contained in Section 21083.2 of the Public Resources Code do not apply.

(3) If an archaeological site does not meet the criteria defined in subsection (a), but does meet the definition of a unique archeological resource in Section 21083.2 of the Public Resources Code, the site shall be treated in accordance with the provisions of section 21083.2. The time and cost limitations described in Public Resources Code Section 21083.2 (c-f) do not apply to surveys and site evaluation activities intended to determine whether the project location contains unique archaeological resources.

(4) If an archaeological resource is neither a unique archaeological nor an historical resource, the effects of the project on those resources shall not be considered a significant effect on the environment. It shall be sufficient that both the resource and the effect on it are noted in the Initial Study or EIR, if one is prepared to address impacts on other resources, but they need not be considered further in the CEQA process.

(d) When an initial study identifies the existence of, or the probable likelihood, of Native American human remains within the project, a lead agency shall work with the appropriate native americans as identified by the Native American Heritage Commission as provided in Public Resources Code SS5097.98. The applicant may develop an agreement for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American burials with the appropriate Native Americans as identified by the Native American Heritage Commission. Action implementing such an agreement is exempt from:
(1) The general prohibition on disinterring, disturbing, or removing human remains from any location other than a dedicated cemetery (Health and Safety Code Section 7050.5).

(2) The requirements of CEQA and the Coastal Act.

(e) In the event of the accidental discovery or recognition of any human remains in any location other than a dedicated cemetery, the following steps should be taken:

(1) There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until:

(A) The coroner of the county in which the remains are discovered must be contacted to determine that no investigation of the cause of death is required, and

(B) If the coroner determines the remains to be Native American:

1. The coroner shall contact the Native American Heritage Commission within 24 hours.

2. The Native American Heritage Commission shall identify the person or persons it believes to be the most likely descended from the deceased native American.

3. The most likely descendent may make recommendations to the landowner or the person responsible for the excavation work, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in Public Resources Code Section 5097.98, or

(f) As part of the objectives, criteria, and procedures required by Section 21082 of the Public Resources Code, a lead agency should make provisions for historical or unique archaeological resources accidentally discovered during construction. These provisions should include an immediate evaluation of the find by a qualified archaeologist. If the find is determined to be an historical or unique archaeological resource, contingency funding and a time allotment sufficient to allow for implementation of avoidance measures or appropriate mitigation should be available. Work could continue on other parts of the building site while historical or unique archaeological resource mitigation takes place.

15126.4 Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects

(a) Mitigation Measures in General.

(1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.

(A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.

(C) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.

(D) If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (Stevens v. City of Glendale(1981) 125 Cal.App.3d 986.)

(2) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.

(3) Mitigation measures are not required for effects which are not found to be significant.

(4) Mitigation measures must be consistent with all applicable constitutional requirements, including the following:

(A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. Nollan v. California Coastal Commission, 483 U.S. 825 (1987); and

(B) The mitigation measure must be "roughly proportional" to the impacts of the project. Dolan v. City of Tigard, 512 U.S. 374 (1994). Where the mitigation measure is an ad hoc exaction, it must be "roughly proportional" to the impacts of the project. Ehrlich v. City of Culver City (1996) 12 Cal.4th 854.

(5) If the lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. Instead, the EIR may simply reference that fact and briefly explain the reasons underlying the lead agency's determination.

(b) Mitigation Measures Related to Impacts on Historical Resources.
(1) Where maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of the historical resource will be conducted in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer, the project's impact on the historical resource shall generally be considered mitigated below a level of significance and thus is not significant.

(2) In some circumstances, documentation of an historical resource, by way of historic narrative, photographs or architectural drawings, as mitigation for the effects of demolition of the resource will not mitigate the effects to a point where clearly no significant effect on the environment would occur.

(3) Public agencies should, whenever feasible, seek to avoid damaging effects on any historical resource of an archaeological nature. The following factors shall be considered and discussed in an EIR for a project involving such an archaeological site:

(A) Preservation in place is the preferred manner of mitigating impacts to archaeological sites. Preservation in place maintains the relationship between artifacts and the archaeological context. Preservation may also avoid conflict with religious or cultural values of groups associated with the site.

(B) Preservation in place may be accomplished by, but is not limited to, the following:

1. Planning construction to avoid archaeological sites;
2. Incorporation of sites within parks, greenspace, or other open space;
3. Covering the archaeological sites with a layer of chemically stable soil before building tennis courts, parking lots, or similar facilities on the site.
4. Deeding the site into a permanent conservation easement.

(C) When data recovery through excavation is the only feasible mitigation, a data recovery plan, which makes provision for adequately recovering the scientifically consequential information from and about the historical resource, shall be prepared and adopted prior to any excavation being undertaken. Such studies shall be deposited with the California Historical Resources Regional Information Center. Archaeological sites known to contain human remains shall be treated in accordance with the provisions of Section 7050.5 Health and Safety Code.

(D) Data recovery shall not be required for an historical resource if the lead agency determines that testing or studies already completed have adequately recovered the scientifically consequential information from and about the archaeological or historical resource, provided that the determination is documented in the EIR and that the studies are deposited with the California Historical Resources Regional Information Center.

15325. Transfers of Ownership of Interest In Land to Preserve Existing Natural Conditions and Historical Resources
Class 25 consists of transfers of ownership in interests in land in order to preserve open space, habitat, or historical resources. Examples include but are not limited to:
(a) Acquisition, sale, or other transfer of areas to preserve existing natural conditions, including plant or animal habitats.
(b) Acquisition, sale, or other transfer of areas to allow continued agricultural use of the areas.
(c) Acquisition, sale, or other transfer to allow restoration of natural conditions, including plant or animal habitats.
(d) Acquisition, sale, or other transfer to prevent encroachment of development into flood plains.
(e) Acquisition, sale, or other transfer to preserve historical resources.
Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21084, Public Resources Code.

15300.2 Exceptions
(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. Therefore, these classes are considered to apply in all instances, except where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.
(b) Cumulative impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.
(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.
(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.
(f) Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historical resource.

15331. Historical Resource Restoration/Rehabilitation
Class 31 consists of projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer.
APPENDIX C: CALIFORNIA REGISTER OF HISTORICAL RESOURCES

The California Register was created by the State Legislature in 1992 and is intended to serve as an authoritative listing of significant historical and archeological resources in California. Additionally, the eligibility criteria for the California Register (codified in PRC § 5024.1 and further amplified in 14 CCR § 4852) are intended to serve as the definitive criteria for assessing the significance of historical resources for purposes of CEQA. In this way establishing a consistent set of criteria to the evaluation process for all public agencies statewide.

Resources can be nominated directly to the California Register or can be listed automatically as defined in PRC § 5024.1(d). Resources that are listed automatically in the California Register include:

- **Resources listed in the National Register of Historic Places** (this includes individual properties as well as historic districts and properties that contribute to the significance of an historic district);
- **Resources that have been formally determined eligible for listing in the National Register of Historic Places** (formal determinations of eligibility are made during federal review processes under Section 106 of the National Historic Preservation Act, during reviews conducted for projects taking advantage of the federal rehabilitation tax credits program, or when a private property being nominated for listing has been opposed by the property owner);
- **California Historical Landmarks** beginning with #770;
- **California Points of Historical Interest** beginning with those designated in January 1998 (the time at which the program was revised to reflect requirements for listing in the California Register).

For further information on applying and interpreting the California Register criteria, please refer to the handout entitled *California Register and National Register: A Comparison and National Register Bulletin 15: How to Apply the National Register Criteria for Evaluation*. Both can be found online at [http://ohp.cal-parks.ca.gov/careqs/ts6ca_nat.htm](http://ohp.cal-parks.ca.gov/careqs/ts6ca_nat.htm) and [http://www.cr.nps.gov/nr/publications/bulletins/nr15_toc.htm](http://www.cr.nps.gov/nr/publications/bulletins/nr15_toc.htm), respectively.
Eligibility Criteria

An historical resource must be significant at the local, state, or national level, under one or more of the following four criteria:

1. It is associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States; or

2. It is associated with the lives of persons important to local, California, or national history; or

3. It embodies the distinctive characteristics of a type, period, region, or method or construction, or represents the work of a master, or possesses high artistic values; or

4. It has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California, or the nation.

Integrity

Integrity is the authenticity of an historical resource's physical identity evidenced by the survival of characteristics that existed during the resource's period of significance. Historical resources eligible for listing in the California Register must meet one of the criteria of significance described above and retain enough of their historic character or appearance to be recognizable as historical resources and to convey the reasons for their significance. Historical resources that have been rehabilitated or restored may be evaluated for listing.

Integrity is evaluated with regard to the retention of location, design, setting, materials, workmanship, feeling, and association. It must also be judged with reference to the particular criteria under which a resource is proposed for eligibility. Alterations over time to a resource or historic changes in its use may themselves have historical, cultural, or architectural significance.

It is possible that historical resources may not retain sufficient integrity to meet the criteria for listing in the National Register, but they may still be eligible for listing in the California Register. A resource that has lost its historic character or appearance may still have sufficient integrity for the California Register if it maintains the potential to yield significant scientific or historical information or specific data.
Special Considerations

**Moved buildings, structures, or objects** The State Historical Resources Commission encourages the retention of historical resources on site and discourages the non-historic grouping of historic buildings into parks or districts. However, it is recognized that moving an historic building, structure, or object is sometimes necessary to prevent its destruction. Therefore, a moved building, structure, or object that is otherwise eligible may be listed in the California Register if it was moved to prevent its demolition at its former location and if the new location is compatible with the original character and use of the historical resource. An historical resource should retain its historic features and compatibility in orientation, setting, and general environment.

**Historical resources achieving significance within the past fifty years** In order to understand the historic importance of a resource, sufficient time must have passed to obtain a scholarly perspective on the events or individuals associated with the resource. A resource less than fifty years old may be considered for listing in the California Register if it can be demonstrated that sufficient time has passed to understand its historical importance.

**Reconstructed buildings** Reconstructed buildings are those buildings not listed in the California Register under the criteria stated above. A reconstructed building less than fifty years old may be eligible if it embodies traditional building methods and techniques that play an important role in a community's historically rooted beliefs, customs, and practices; e.g., a Native American roundhouse.
APPENDIX D: SECRETARY OF THE INTERIOR’S STANDARDS FOR PROFESSIONALS IN HISTORIC PRESERVATION

The OHP recommends that public agencies seeking to contract with outside consultants to conduct evaluations of the significance of historical resources and proposed project impacts ensure that such consultants meet professional qualifications standards. In the absence of state promulgated standards for such professionals, it is recommended that public agencies consider adopting the standards put forward by the Secretary of the Interior.

In the September 29, 1983, issue of the Federal Register, the National Park Service published the following Professional Qualification Standards as part of the larger Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation. These Professional Qualification Standards are in effect currently. Since 1983, the National Park Service has not issued any revisions for effect, although the National Park Service is in the process of drafting such revisions.

The following requirements are those used by the National Park Service, and have been previously published in the Code of Federal Regulations, 36 CFR Part 61. The qualifications define minimum education and experience required to perform identification, evaluation, registration, and treatment activities. In some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the historic properties involved. In the following definitions, a year of full-time professional experience need not consist of a continuous year of full-time work but may be made up of discontinuous periods of full-time or part-time work adding up to the equivalent of a year of full-time experience.

History

The minimum professional qualifications in history are a graduate degree in history or closely related field; or a bachelor’s degree in history or closely related field plus one of the following:

1. At least two years of full-time experience in research, writing, teaching, interpretation, or other demonstrable professional activity with an academic institution, historical organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.
Archeology

The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

1. At least one year of full-time professional experience or equivalent specialized training in archeological research, administration or management;
2. At least four months of supervised field and analytic experience in general North American archeology; and
3. Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, a professional in prehistoric archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the prehistoric period.

A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of the historic period.

Architectural History

The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history; or a bachelor's degree in architectural history, art history, historic preservation or closely related field plus one of the following:

1. At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or
2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.

Architecture

The minimum professional qualifications in architecture are a professional degree in architecture plus at least two years of full-time experience in architecture; or a State license to practice architecture.

Historic Architecture

The minimum professional qualifications in historic architecture are a professional degree in architecture or a State license to practice architecture, plus one of the following:

1. At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or
2. At least one year of full-time professional experience on historic preservation projects. Such graduate study or experience shall include detailed investigations of historic structures, preparation of historic structures research reports, and preparation of plans and specifications for preservation projects.
APPENDIX E: SECRETARY OF THE INTERIOR’S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES

The information contained in this appendix is provided solely for informational purposes due to the fact that the CEQA Guidelines make reference to the Secretary of the Interior’s Standards for the Treatment of Historic Properties (14 CCR § 15064.5(b)(3), 15126.4(b)(1) and 15331). It is the responsibility of the lead agency under CEQA, not the OHP as is often mistakenly assumed, to assess whether or not a proposed project meets these standards, and it is the right of any individual or organization to offer comments relative to the findings of a lead agency regarding the application of these standards.

The following information is reprinted from the National Park Service’s website. This information as well as additional publications, including the illustrated version of the standards and guidelines (which is referenced in the CEQA Guidelines), can be found on the internet at http://www2.cr.nps.gov/tps/tpscat.htm.

Rooted in over 120 years of preservation ethics in both Europe and America, The Secretary of the Interior’s Standards for the Treatment of Historic Properties are common sense principles in non-technical language. They were developed to help protect our nation’s irreplaceable cultural resources by promoting consistent preservation practices. The Standards may be applied to all properties listed in the National Register of Historic Places: buildings, sites, structures, objects, and districts.

It should be understood that the Standards are a series of concepts about maintaining, repairing and replacing historic materials, as well as designing new additions or making alterations; as such, they cannot, in and of themselves, be used to make essential decisions about which features of a historic property should be saved and which might be changed. But once an appropriate treatment is selected, the Standards provide philosophical consistency to the work.

Four Treatment Approaches

There are Standards for four distinct, but interrelated, approaches to the treatment of historic properties—preservation, rehabilitation, restoration, and reconstruction.

Preservation focuses on the maintenance and repair of existing historic materials and retention of a property’s form as it has evolved over time. (Protection and Stabilization have now been consolidated under this treatment.)
Rehabilitation acknowledges the need to alter or add to a historic property to meet continuing or changing uses while retaining the property's historic character.

Restoration depicts a property at a particular period of time in its history, while removing evidence of other periods.

Reconstruction re-creates vanished or non-surviving portions of a property for interpretive purposes.

Choosing an Appropriate Treatment

Choosing an appropriate treatment for a historic building or landscape, whether preservation, rehabilitation, restoration, or reconstruction is critical. This choice always depends on a variety of factors, including its historical significance, physical condition, proposed use, and intended interpretation.

The questions that follow pertain specifically to historic buildings, but the process of decisionmaking would be similar for other property types:

Relative importance in history. Is the building a nationally significant resource—a rare survivor or the work of a master architect or craftsman? Did an important event take place in it? National Historic Landmarks, designated for their "exceptional significance in American history," or many buildings individually listed in the National Register often warrant Preservation or Restoration. Buildings that contribute to the significance of a historic district but are not individually listed in the National Register more frequently undergo Rehabilitation for a compatible new use.

Physical condition. What is the existing condition—or degree of material integrity—of the building prior to work? Has the original form survived largely intact or has it been altered over time? Are the alterations an important part of the building's history? Preservation may be appropriate if distinctive materials, features, and spaces are essentially intact and convey the building's historical significance. If the building requires more extensive repair and replacement, or if alterations or additions are necessary for a new use, then Rehabilitation is probably the most appropriate treatment. These key questions play major roles in determining what treatment is selected.

Proposed use. An essential, practical question to ask is: Will the building be used as it was historically or will it be given a new use? Many historic buildings can be adapted for new uses without seriously damaging their historic character; special-use properties such as grain silos, forts, ice houses, or windmills may be extremely difficult to adapt to new uses without major intervention and a resulting loss of historic character and even integrity.

Mandated code requirements. Regardless of the treatment, code requirements will need to be taken into consideration. But if hastily or poorly designed, code-required
work may jeopardize a building’s materials as well as its historic character. Thus, if a building needs to be seismically upgraded, modifications to the historic appearance should be minimal. Abatement of lead paint and asbestos within historic buildings requires particular care if important historic finishes are not to be adversely affected. Finally, alterations and new construction needed to meet accessibility requirements under the Americans with Disabilities Act of 1990 should be designed to minimize material loss and visual change to a historic building.

Standards for Preservation

Preservation is defined as the act or process of applying measures necessary to sustain the existing form, integrity, and materials of an historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction. New exterior additions are not within the scope of this treatment; however, the limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a preservation project.

1. A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces, and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.

2. The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate, and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color, and texture.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

**Preservation as a Treatment.** When the property's distinctive materials, features, and spaces are essentially intact and thus convey the historic significance without extensive repair or replacement; when depiction at a particular period of time is not appropriate; and when a continuing or new use does not require additions or extensive alterations, Preservation may be considered as a treatment.

**Standards for Rehabilitation**

Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Rehabilitation as a treatment. When repair and replacement of deteriorated features are necessary; when alterations or additions to the property are planned for a new or continued use; and when its depiction at a particular period of time is not appropriate, Rehabilitation may be considered as a treatment.

Standards for Restoration

Restoration is defined as the act or process of accurately depicting the form, features, and character of a property as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period. The limited and sensitive upgrading of mechanical, electrical, and plumbing systems and other code-required work to make properties functional is appropriate within a restoration project.

1. A property will be used as it was historically or be given a new use which reflects the property's restoration period.

2. Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period will not be undertaken.

3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate and conserve materials and features from the restoration period will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

4. Materials, features, spaces, and finishes that characterize other historical periods will be documented prior to their alteration or removal.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period will be preserved.

6. Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials.

7. Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.

8. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

9. Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

10. Designs that were never executed historically will not be constructed.

Restoration as a treatment. When the property’s design, architectural, or historical significance during a particular period of time outweighs the potential loss of extant materials, features, spaces, and finishes that characterize other historical periods; when there is substantial physical and documentary evidence for the work; and when contemporary alterations and additions are not planned, Restoration may be considered as a treatment. Prior to undertaking work, a particular period of time, i.e., the restoration period, should be selected and justified, and a documentation plan for Restoration developed.

Standards for Reconstruction

Reconstruction is defined as the act or process of depicting, by means of new construction, the form, features, and detailing of a non-surviving site, landscape, building, structure, or object for the purpose of replicating its appearance at a specific period of time and in its historic location.

1. Reconstruction will be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture, and such reconstruction is essential to the public understanding of the property.
2. Reconstruction of a landscape, building, structure, or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts which are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.

3. Reconstruction will include measures to preserve any remaining historic materials, features, and spatial relationships.

4. Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color, and texture.

5. A reconstruction will be clearly identified as a contemporary re-creation.

6. Designs that were never executed historically will not be constructed.

**Reconstruction as a treatment.** When a contemporary depiction is required to understand and interpret a property's historic value (including the re-creation of missing components in a historic district or site); when no other property with the same associative value has survived; and when sufficient historical documentation exists to ensure an accurate reproduction, Reconstruction may be considered as a treatment.
APPENDIX F: A GUIDE TO PLANNING IN CALIFORNIA

STATE OF CALIFORNIA
Pete Wilson, Governor

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Introduction

This is a citizen's guide to land use planning as it is practiced in California. Its purpose is to explain, in general terms, how local communities regulate land use and to define some commonly used planning terms. The booklet covers the following topics:

- State Law and Local Planning
- The General Plan
- Zoning
- Subdivisions
- Other Ordinances and Regulations
- Annexation and Incorporation
- The California Environmental Quality Act
- A Glossary of Planning Terms
- Bibliography

Cities and counties "plan" in order to identify important community issues (such as new growth, housing needs, and environmental protection), project future demand for services (such as sewer, water, roads, etc.), anticipate potential problems (such as overloaded sewer facilities or crowded roads), and establish goals and policies for directing and managing growth. Local governments use a variety of tools in the planning process including the general plan, specific plans, zoning, and the subdivision ordinance.
The examples to be discussed here represent common procedures or methods, but are by no means the only way of doing things. State law establishes a framework for local planning procedures, but cities and counties adopt their own unique responses to the issues they face. The reader is encouraged to consult the bibliography for more information on planning in general and to contact your local planning department for information on planning in your community.

State and Local Planning

State law is the foundation for local planning in California. The California Government Code (Sections 65000 et seq.) contains many of the laws pertaining to the regulation of land uses by local governments including: the general plan requirement, specific plans, subdivisions, and zoning.

However, the State is seldom involved in local land use and development decisions; these have been delegated to the city councils and boards of supervisors of the individual cities and counties. Local decisionmakers have adopted their own sets of land use policies and regulations based upon the state laws.

Plan and Ordinances

There are currently 456 incorporated cities and 58 counties in California. State law requires that each of these jurisdictions adopt "a comprehensive, long-term general plan for [its] physical development." This general plan is the official city or county policy regarding the location of housing, business, industry, roads, parks, and other land uses, protection of the public from noise and other environmental hazards, and for the conservation of natural resources. The legislative body of each city (the city council) and each county (the board of supervisors) adopts zoning, subdivision and other ordinances to regulate land uses and to carry out the policies of its general plan.

There is no requirement that adjoining cities or cities and counties have identical, or even similar, plans and ordinances. Cities and counties are distinct and independent political units. Each city, through its council and each county, through its supervisors, adopts its own general plan and development regulations. In turn, each of these governments is responsible for the planning decisions made within its jurisdiction.

Hearing Bodies

In most communities, the city council or board of supervisors has appointed one or more hearing bodies to assist them with planning matters. The titles and responsibilities of these groups vary from place-to-place, so check with your local planning department regarding regulations in your area. Here are some of the more common types of hearing bodies and their usual responsibilities:

The Planning Commission: considers general plan and specific plan amendments, zone changes, and major subdivisions.
The Zoning Adjustment Board: considers conditional use permits, variances, and other minor permits.

Architectural Review or Design Review Board: reviews projects to ensure that they meet community aesthetic standards. In some cities and counties, these bodies simply advise the legislative body on the proposals that come before them, leaving actual approval to the council or board of supervisors. More commonly, these bodies have the power to approve proposals, subject to appeal to the council or board of supervisors. These hearing bodies, however, do not have final say on matters of policy such as zone changes and general or specific plan amendments.

Hearings
State law requires that local governments hold public hearings prior to most planning actions. At the hearing, the council or supervisors or advisory commission will explain the proposal, consider it in light of local regulations and environmental effects, and listen to testimony from interested parties. The council, board, or commission will vote on the proposal at the conclusion of the hearing.

Depending upon each jurisdiction's local ordinance, public hearings are not always required for minor land subdivisions, architectural or design review or ordinance interpretations. The method of advertising hearings may vary. Counties and general law cities publish notice of general plan adoption and amendment in the newspaper. Notice of zone change, conditional use permit, variance, and subdivision tracts is published in the newspaper and mailed to nearby property owners. Charter cities may have other notification procedures.

The General Plan
The Blueprint
The local general plan can be described as the city's or county's "blueprint" for future development. It represents the community's view of its future; a constitution made up of the goals and policies upon which the city council, board of supervisors, or planning commission will base their land use decisions. To illustrate its importance, all subdivisions, public works projects, and zoning decisions (except in charter cities other than Los Angeles) must be consistent with the general plan. If inconsistent, they must not be approved.

Long-Range Emphasis
The general plan is not the same as zoning. Although both designate how land may be developed, they do so in different ways. The general plan and its diagrams have a long-term outlook, identifying the types of development that will be allowed, the spatial relationships among land uses, and the general pattern of future development. Zoning regulates present development through specific standards such as lot size, building setback, and a list of allowable uses. In counties and general law cities, the land uses
shown on the general plan diagrams will usually be reflected in the local zoning maps as well. Development must not only meet the specific requirements of the zoning ordinance, but also the broader policies set forth in the local general plan.

**Contents**

State law requires that each city and each county adopt a general plan containing the following seven components or “elements”: land use, circulation, housing, conservation, open-space, noise, and safety (Government Code Sections 65300 et seq.). At the same time, each jurisdiction is free to adopt a wide variety of additional elements covering subjects of particular interest to that jurisdiction such as recreation, urban design, or public facilities.

Most general plans consist of: (1) a written text discussing the community's goals, objectives, policies, and programs for the distribution of land use; and, (2) one or more diagrams or maps illustrating the general location of existing and future land uses. Figure 1 is an example of a general plan diagram.

Each local government chooses its own general plan format. The plan may be relatively short or long, one volume or ten volumes, depending upon local needs. Some communities, such as the City of San Jose, have combined the required elements into one document and most communities have adopted plans which consolidate the elements to some extent. State law requires that local governments make copies of their plans available to the public for the cost of reproduction.

**Planning Issues**

Although state law establishes a set of basic issues for consideration in local general plans, each city and county determines the relative importance of each issue to local planning and decides how they are to be addressed in the general plan. As a result, no two cities or counties have plans which are exactly alike in form or content. Here is a summary of the basic issues, by element:

The **land use element** designates the general location and intensity of housing, business, industry, open space, education, public buildings and grounds, waste disposal facilities, and other land uses.

The **circulation element** identifies the general location and extent of existing and proposed major roads, transportation routes, terminals, and public utilities and facilities. It must be correlated with the land use element.

The **housing element** is a comprehensive assessment of current and projected housing needs for all economic segments of the community and region. It sets forth local housing policies and programs to implement those policies.

The **conservation element** addresses the conservation, development, and use of natural resources including water, forests, soils, rivers, and mineral deposits.
The **open-space element** details plans and measures for preserving open-space for natural resources, the managed production of resources, outdoor recreation, public health and safety, and the identification of agricultural land.

The **noise element** identifies and appraises noise problems within the community and forms the basis for distributing new noise-sensitive land uses.

The **safety element** establishes policies and programs to protect the community from risks associated with seismic, geologic, flood, and wildfire hazards.

**Approving the Plan**

The process of adopting or amending a general plan encourages public participation. Cities and counties must hold public hearings for such proposals. Advance notice of the place and time of the hearing must be published in the newspaper or posted in the vicinity of the site proposed for change. Prior to approval, hearings will be held by the planning commission and the city council or board of supervisors.

**Community and Specific Plans**

"Community plans" and "specific plans" are often used by cities and counties to plan the future of a particular area at a finer level of detail than that provided by the general plan. A community plan is a portion of the local general plan focusing on the issues pertinent to a particular area or community within the city or county. It supplements the policies of the general plan.

Specific plans describe allowable land uses, identify open space, and detail infrastructure availability and financing for a portion of the community. Specific plans implement, but are not technically a part of the local general plan. In some jurisdictions, specific plans take the place of zoning. Zoning, subdivision, and public works decisions must be in accordance with the specific plan.

**Zoning**

The general plan is a long-range look at the future of the community. A zoning ordinance is the local law that spells out the immediate, allowable uses for each piece of property within the community. In all counties, general law cities, and the city of Los Angeles, zoning must comply with the general plan. The purpose of zoning is to implement the policies of the general plan.

**Zones**

Under the concept of zoning, various kinds of land uses are grouped into general categories or "zones" such as single-family residential, multi-family residential, neighborhood commercial, light industrial, agricultural, etc. A typical zoning ordinance describes 20 or more different zones which may be applied to land within the community. Each piece of property in the community is assigned a zone listing the kinds of uses that will be allowed on that land and setting standards such as minimum lot size, maximum building height, and minimum front yard depth. The distribution of residential,
commercial, industrial, and other zones will be based on the pattern of land uses established in the community's general plan. Maps are used to keep track of the zoning for each piece of land.

Zoning is adopted by ordinance and carries the weight of local law. Land may be put only to those uses listed in the zone assigned to it. For example, if a commercial zone does not allow five-story office buildings, then no such building could be built on the lands which have been assigned that zone. A zoning ordinance has two parts: (1) a precise map or maps illustrating the distribution of zones within the community; and, (2) a text which both identifies the specific land uses allowed within each of those zones and sets forth development standards.

**Rezoning**

The particular zone determines the uses to which land may be put. If a landowner proposes a use that is not allowed in the zone, the city or county must approve a rezoning (change in zone) before development of that use can begin. The local planning commission and the city council or county board of supervisors must hold public hearings before property may be rezoned. The hearings must be advertised in advance. The council or board is not obligated to approve requests for rezoning and, except in charter cities, must deny such requests when the proposed zone conflicts with the general plan.

**Overlay Zones**

In addition to the zoning applied to each parcel of land, many cities and counties use "overlay zones" to further regulate development in areas of special concern. Lands in historic districts, downtowns, floodplains, near earthquake faults or on steep slopes are often subject to having additional regulations "overlain" upon the basic zoning requirements. For example, a lot that is within a single-family residential zone and also subject to a steep-slope overlay zone, must meet the requirements of both zones when it is developed.

**Prezoning**

Cities may "prezone" lands located within the surrounding county in the same way that they approve zoning. Prezoning is usually done before annexation of the land to the city in order to facilitate its transition into the city boundaries. Prezoning does not change the allowable uses of the land nor the development standards until such time as the site is officially annexed to the city. Likewise, land that has been prezoned continues to be subject to county zoning regulations until annexation is completed.

**Variances**

A variance is a limited waiver of development standards. The city or county may grant a variance in special cases where: (1) application of the zoning regulations would deprive property of the uses enjoyed by nearby, similarly zoned lands; and (2) restrictions have been imposed to ensure that the variance will not be a grant of special privilege. A city or county may not grant a variance that would permit a use that is not otherwise allowed in that zone (for example, a commercial use could not be approved in a residential zone.
by variance). Typically, variances are considered when the physical characteristics of
the property make it difficult to develop. For instance, in a situation where the rear half
of a lot is a steep slope, a variance might be approved to allow the house being built to
be closer to the street than usually allowed. Variance requests require a public hearing
and neighbors are given the opportunity to testify. The local hearing body then decides
whether to approve or deny the variance.

**Conditional Use Permits**
Most zoning ordinances identify certain land uses which do not precisely fit into existing
zones, but which may be allowed upon approval of a conditional use permit (sometimes
called a special use permit or a CUP) at a public hearing. These might include
community facilities (such as hospitals or schools), public buildings or grounds (such as
fire stations or parks), temporary or hard-to-classify uses (such as Christmas tree sales
or small engine repair), or land uses with potentially significant environmental impacts
(hazardous chemical storage or building a house in a floodplain). The local zoning
ordinance specifies those uses for which a conditional use permit may be requested,
which zones they may be requested in, and the public hearing procedure. If the local
planning commission or zoning board approves the use, it will usually do so subject to
certain conditions being met by the permit applicant. Alternatively, it may deny uses
which do not meet local standards.

**Subdivisions**
In general, land cannot be divided in California without local government approval.
Dividing land for sale, lease or financing is regulated by local ordinances based on the
State Subdivision Map Act (commencing with Government Code Section 66410). The
local general plan, zoning, subdivision, and other ordinances govern the design of the
subdivision, the size of its lots, and the types of improvements (street construction,
sewer lines, drainage facilities, etc.). In addition, the city or county may impose a variety
of fees upon the subdivision, depending upon local and regional needs, such as school
impact fees, park dedications, etc. Contact your local planning department for
information on local requirements and procedures.

**Subdivision Types**
There are basically two types of subdivisions: parcel maps, which are limited to
divisions resulting in fewer than five lots (with certain exceptions), and final map
subdivisions (also called tract maps), which apply to divisions resulting in five or more
lots. Applications for both types of subdivisions must be submitted to the local
government for consideration in accordance with the local subdivision ordinance and
the Subdivision Map Act.

**Processing**
Upon receiving an application for a subdivision map, the city or county staff will examine
the design of the subdivision to ensure that it meets the requirements of the general
plan, the zoning ordinance, and the subdivision ordinance. An environmental impact
analysis must be prepared and a public hearing held prior to approval of a tentative tract map. Parcel maps may also be subject to a public hearing, depending upon the requirements of the local subdivision ordinance.

**Final Approval**
Approval of a subdivision map generally means that the subdivider will be responsible for installing improvements such as streets, drainage facilities or sewer lines to serve the subdivision. These improvements must be installed or secured by bond before the city or county will grant final approval of the map and allow the subdivision to be recorded in the county recorder's office. Lots within the subdivision cannot be sold until the map has been recorded. The subdivider has at least two years (and depending upon local ordinance, usually more) in which to comply with the improvement requirements, gain final administrative approval, and record the final map. Parcel map requirements may vary dependent upon local ordinance requirements.

**Other Ordinances and Regulations**
Cities and counties often adopt other ordinances besides zoning and subdivision to protect the general health, safety, and welfare of their inhabitants. Contact your local planning department for information on the particular ordinances in effect in your area. Common types include: flood protection, historic preservation, design review, hillside development control, growth management, impact fees, traffic management, and sign control.

Local ordinances may also be adopted in response to state requirements. Examples include: Local Coastal Programs (California Coastal Act); surface mining regulations (Surface Mining and Reclamation Act); earthquake hazard standards (Alquist-Priolo Special Studies Zone Act); and hazardous material disclosure requirements. These regulations are generally based on the applicable state law.

**Annexation and Incorporation**

**The LAFCO**
Annexation (the addition of territory to an existing city) and incorporation (creation of a new city) are controlled by the Local Agency Formation Commission (LAFCO) established in each county by the state's Cortese-Knox Act (commencing with Government Code Section 56000). The commission is made up of elected officials from the county, cities, and, in some cases, special districts. LAFCO duties include: establishing the "spheres of influence" that designate the ultimate service areas of cities and special districts; studying and approving requests for city annexations; and, studying and approving proposals for city incorporations. Below is a very general discussion of annexation and incorporation procedures. For detailed information on this complex subject, contact your county LAFCO.
Annexation
When the LAFCO receives an annexation request, it will convene a hearing to determine the worthiness of the proposal and may deny or conditionally approve the request based on the policies of the LAFCO and state law. Annexation requests which receive tentative approval are delegated to the affected city for hearings and, if necessary, an election. Annexations which have been passed by vote of the inhabitants or which have not been defeated by protest (in cases where no election was required) must be certified by the LAFCO as to meeting all its conditions before they become final. It is the LAFCO, not the city, that is ultimately responsible for the annexation process.

Incorporation
When the formation of a new city is proposed, the LAFCO studies the economic feasibility of the proposed city, its impact on county and special districts, and the provision of public services. If the feasibility of the proposed city cannot be shown, the LAFCO can terminate the proceedings. If the proposed city appears to be feasible, LAFCO will refer the proposal to the county board of supervisors for hearing along with a set of conditions to be met upon to incorporation. If the supervisors do not receive protests from a majority of the involved voters, an election will be held to create the city and elect city officials.

The California Environmental Quality Act (CEQA)

The California Environmental Quality Act (commencing with Public Resources Code Section 21000) requires local and state governments to consider the potential environmental effects of a project before deciding whether to approve it or not. CEQA's purpose is to disclose the potential impacts of a project, suggest methods to minimize those impacts, and discuss alternatives to the project so that decision makers will have full information upon which to base their decision. CEQA is a complex law with a great deal of subtlety and local variation.

The following discussion is extremely general. The basic requirements and administrative framework for local governments' CEQA responsibilities are described in the California Environmental Quality Act: Law and Guidelines. For more information, readers should contact their local planning department or refer to the CEQA listings in the bibliography.

Lead Agency
The "lead agency" is responsible for seeing that environmental review is done in accordance with CEQA and that environmental analyses are prepared when necessary. The agency with the principal responsibility for issuing permits to a project (or for carrying out the project) is deemed to be the "lead agency". As lead agency, it may prepare the environmental analysis itself or it may contract for the work to be done under its direction. In practically all local planning matters (such as rezoning, conditional use permits, and specific plans) the planning department is the lead agency.
Analysis
Analyzing a project's potential environmental effect is a multistep process. Many minor projects are exempt from the CEQA requirements. These include single-family homes, remodeling, accessory structures, and some lot divisions (for a complete list refer to California Environmental Quality Act: Law and Guidelines). No environmental review is required when a project is exempt from CEQA.

When a project is subject to review under CEQA, the lead agency prepares an "initial study" to assess the potential adverse physical impacts of the proposal. When the project will not cause a "significant" impact on the environment or when it has been revised to eliminate all such impacts, a "negative declaration" is prepared. The negative declaration describes why the project will not have a significant impact and may require that the project incorporate a number of measures ensuring that there will be no such impact. If significant environmental effects are identified, then an Environmental Impact Report (EIR) must be written before the project can be considered by decision makers.

The EIR
An EIR discusses the proposed project, its environmental setting, its probable impacts, realistic means of reducing or eliminating those impacts, its cumulative effects, and alternatives to the project. CEQA requires that Negative Declarations and EIRs be made available for review by the public and other agencies prior to consideration of the project. The review period allows concerned citizens and agencies to comment on the completeness and adequacy of the environmental review prior to its completion. When the decision making body (the city council, board of supervisors, or other board or commission) approves a project, it must certify the adequacy of the environmental review. If its decision to approve a project will result in unavoidable significant impacts, the decision making body must state, in writing, its overriding reasons for granting the approval and how the impacts are to be addressed.

An EIR is an informational document. It does not, in itself, approve or deny a project. Environmental analysis must be done as early as possible in the process of considering a project and must address the entire project. There are several different types of EIRs that may be prepared, depending upon the project. They are described in the California Environmental Quality Act: Law and Guidelines written by the Governor's Office of Planning and Research and the Resources Agency.

Glossary
These are some commonly used planning terms. This list includes several terms that are not discussed in this booklet.

Board of Supervisors
A county's legislative body. Board members are elected by popular vote and are responsible for enacting ordinances, imposing taxes, making appropriations, and
establishing county policy. The board adopts the general plan, zoning, and subdivision regulations.

**CEQA**
The California Environmental Quality Act (commencing with Public Resources Code Section 21000). In general, CEQA requires that all private and public projects be reviewed prior to approval for their potential adverse effects upon the environment.

**Charter City**
A city which has been incorporated under its own charter rather than under the general laws of the state. Charter cities have broader powers to enact land use regulations than do general law cities.

**City Council**
A city's legislative body. The popularly elected city council is responsible for enacting ordinances, imposing taxes, making appropriations, establishing policy, and hiring some city officials. The council adopts the local general plan, zoning, and subdivision ordinance.

**COG**
Council of Governments. There are 25 COGs in California made up of elected officials from member cities and counties. COGs are regional agencies concerned primarily with transportation planning and housing; they do not directly regulate land use.

**Community Plan**
A portion of the local general plan that focuses on a particular area or community within the city or county. Community plans supplement the policies of the general plan.

**Conditional Use Permit**
Pursuant to the zoning ordinance, a conditional use permit (CUP) may authorize uses not routinely allowed on a particular site. CUPs require a public hearing and if approval is granted, are usually subject to the fulfillment of certain conditions by the developer. Approval of a CUP is not a change in zoning.

**Density Bonus**
An increase in the allowable number of residences granted by the city or county in return for the project's providing low- or moderate-income housing (see Government Code Section 65915).

**Design Review Committee**
A group appointed by the city council to consider the design and aesthetics of development within design review zoning districts.

**Development Fees**
Fees charged to developers or builders as a prerequisite to construction or development approval. The most common are: (1) impact fees (such as parkland acquisition fees,
school facilities fees, or street construction fees) related to funding public improvements which are necessitated in part or in whole by the development; (2) connection fees (such as water line fees) to cover the cost of installing public services to the development; (3) permit fees (such as building permits, grading permits, sign permits) for the administrative costs of processing development plans; and, (4) application fees (rezoning, CUP, variance, etc.) for the administrative costs of reviewing and hearing development proposals.

Downzone
This term refers to the rezoning of land to a more restrictive zone (for example, from multi-family residential to single-family residential or from residential to agricultural).

EIR
Environmental Impact Report. A detailed review of a proposed project, its potential adverse impacts upon the environment, measures that may avoid or reduce those impacts, and alternatives to the project.

Final Map Subdivision
Final map subdivisions (also called tract maps or major subdivisions) are land divisions which create five or more lots. They must be consistent with the general plan and are generally subject to stricter requirements than parcel maps. Such requirements may include installing road improvements, the construction of drainage and sewer facilities, parkland dedications, and more.

Floor Area Ratio
Abbreviated as FAR, this is a measure of development intensity. FAR is the ratio of the amount of floor area of a building to the amount of area of its site. For instance, a one-story building that covers an entire lot has an FAR of 1. Similarly, a one-story building that covers 1/2 of a lot has an FAR of 1/2.

General Law City
A city incorporated under and run in accordance with the general laws of the state.

General Plan
A statement of policies, including text and diagrams setting forth objectives, principles, standards, and plan proposals, for the future physical development of the city or county (see Government Code Sections 65300 et seq.).

"Granny" Housing
Typically, this refers to a second dwelling attached to or separate from the main residence that houses one or more elderly persons. California Government Code 65852.1 enables cities and counties to approve such units in single-family neighborhoods.

Impact Fees
See Development Fees.
Infrastructure
A general term describing public and quasi-public utilities and facilities such as roads, bridges, sewers and sewer plants, water lines, power lines, fire stations, etc.

Initial Study
Pursuant to CEQA, an analysis of a project's potential environmental effects and their relative significance. An initial study is preliminary to deciding whether to prepare a negative declaration or an EIR.

Initiative
A ballot measure which has been placed on the election ballot as a result of voter signatures and which addresses a legislative action. At the local level, initiatives usually focus on changes or additions to the general plan and zoning ordinance. The right to initiative is guaranteed by the California Constitution.

LAFCO
Local Agency Formation Commission. The Cortese-Knox Act (commencing with Government Code Section 56000) establishes a LAFCO made up of elected officials of the county, cities, and, in some cases, special districts in each county. LAFCOs establish spheres of influence for all the cities and special districts within the county. They also administer incorporation and annexation proposals.

Mitigation Measure
The California Environmental Quality Act requires that when an environmental impact or potential impact is identified, measures must be proposed that will eliminate, avoid, rectify, compensate for or reduce those environmental effects.

Negative Declaration
When a project is not exempt from CEQA and will not have a significant effect upon the environment a negative declaration must be written. The negative declaration is an informational document that describes the reasons why the project will not have a significant effect and proposes measures to mitigate or avoid any possible effects.

Overlay Zone
A set of zoning requirements that is superimposed upon a base zone. Overlay zones are generally used when a particular area requires special protection (as in a historic preservation district) or has a special problem (such as steep slopes, flooding or earthquake faults). Development of land subject to overlay zoning requires compliance with the regulations of both the base and overlay zones.

Parcel Map
A minor subdivision resulting in fewer than five lots. The city or county may approve a parcel map when it meets the requirements of the general plan and all applicable ordinances. The regulations governing the filing and processing of parcel maps are found in the state Subdivision Map Act and the local subdivision ordinance.
Planned Unit Development (PUD)
Land use zoning which allows the adoption of a set of development standards that are specific to the particular project being proposed. PUD zones usually do not contain detailed development standards; these are established during the process of considering the proposals and adopted by ordinance if the project is approved.

Planning Commission
A group of residents appointed by the city council or board of supervisors to consider land use planning matters. The commission's duties and powers are established by the local legislative body and might include hearing proposals to amend the general plan or rezone land, initiating planning studies (road alignments, identification of seismic hazards, etc.), and taking action on proposed subdivisions.

Referendum
A ballot measure challenging a legislative action by the city council or county board of supervisors. Referenda petitions must be filed before the action becomes final and may lead to an election on the matter. The California Constitution guarantees the right to referendum.

School Impact Fees
Proposition 13 put a limit on property taxes and thereby limited the main source of funding for new school facilities. California law allows school districts to impose fees on new developments to offset their impacts of area schools.

Setback
A minimum distance required by zoning to be maintained between two structures or between a structure and property lines.

Specific Plan
A plan addressing land use distribution, open space availability, infrastructure, and infrastructure financing for a portion of the community. Specific plans put the provisions of the local general plan into action (see Government Code Sections 65450 et seq.).

Tentative Map
The map or drawing illustrating a subdivision proposal. The city or county will approve or deny the proposed subdivision based upon the design depicted by the tentative map. A subdivision is not complete until the conditions of approval imposed upon the tentative map have been satisfied and a final map has been certified by the city or county and recorded with the county recorder.

Tract Map
See final map subdivision.

Transportation Systems Management (TSM)
A transportation plan that coordinates many forms of transportation (car, bus, carpool, rapid transit, bicycle, walking, etc.) in order to distribute the traffic impacts of new development. Rather than emphasizing road expansion or construction (as does traditional transportation planning), TSM examines methods of increasing the efficiency of road use.

**Variance**
A limited waiver from the requirements of the zoning ordinance. Variance requests are subject to public hearing, usually before a zoning administrator or board of zoning adjustment. Variances may only be granted under special circumstances.

**Zoning**
Local codes regulating the use and development of property. The zoning ordinance divides the city or county into land use districts or "zones", represented on zoning maps, and specifies the allowable uses within each of those zones. It establishes development standards such as minimum lot size, maximum height of structures, building setbacks, and yard size.

**Zoning Adjustment Board**
A group appointed by the local legislative body to consider minor zoning adjustments such as conditional use permits and variances. It is empowered to conduct public hearings and to impose conditions of approval. Its decisions may be appealed to the local legislative body.

**Zoning Administrator**
A planning department staff member responsible for hearing minor zoning permits. Typically, the zoning administrator considers variances and conditional use permits and may interpret the provisions of the zoning ordinance when questions arise. His/her decision may be appealed to the local legislative body.

**Bibliography: A Few Good Books**

The reader is encouraged to refer to the following books for a better understanding of planning in California.


*California Environmental Quality Act: Statutes and Guidelines* (Governor's Office of Planning and Research, Sacramento, California) 1996, 301 pp. The CEQA Guidelines describe the requirements for evaluating environmental impacts. Out of Print, check in the government documents section of your local library.
California Land Use and Planning Law, by Daniel J. Curtin Jr., (Solano Press, Pt. Arena, California) revised annually. A look at the planning, zoning, subdivision, and environmental quality laws that is illustrated by references to numerous court cases.

The General Plan Guidelines (Governor’s Office of Planning and Research, Sacramento, California) 1987, 368 pp. The Guidelines discuss local planning activities and how to write or revise a general plan.


Your Guide to Open Meetings, The Ralph M. Brown Act, by the Senate Local Government Committee (Joint Publications Office, Sacramento, California), 1989. An easy to read explanation of the state’s open meeting laws and the responsibilities of local government with regard to public meetings.
APPENDIX G: INFORMATION CENTER CONTACT LIST

The following institutions are under agreement with the Office of Historic Preservation to:
1. Integrate information on new Resources and known Resources into the California Historical Resources Information System.
2. Supply information on resources and surveys to government, institutions, and individuals who have a need to know.
3. Supply a list of consultants qualified to do historic preservation fieldwork within their area.

COORDINATOR:  John Thomas, Historian II, (916) 653-9125

Northwest Information Center
Counties:  Alameda, Colusa, Contra Costa, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Yolo
Ms. Leigh Jordan, Coordinator
Sonoma State University, 1801 East Cotati Ave, Rohnert Park CA 94928
(707) 664-2494, Fax (707) 664-3947
nwic@sonoma.edu

Northeast Information Center
Counties:  Butte, Glenn, Lassen, Modoc, Plumas, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity
Dr. Frank Bayham, Interim Coordinator
Dept of Anthropology, Langdon 303, California State University, Chico CA 95929-0400
Attn: Amy Huberland, Asst Coordinator
(530) 898-6256, Fax (530) 898-4413, please call first
neinfocnt@csuchico.edu

Central California Information Center
Counties:  Alpine, Calaveras, Mariposa, Merced, San Joaquin, Stanislaus, Tuolumne
Ms. Elizabeth A. Greathouse, Coordinator
Dept of Anthropology, California State University, 801 W Monte Vista Ave, Turlock CA 95382
(209) 667-3307, Fax (209) 667-3324
egreatho@toto.csustan.edu

Central Coastal Information Center
Counties:  San Luis Obispo, Santa Barbara
Dr. Michael A. Glassow, Coordinator
Dept of Anthropology, University of California, Santa Barbara CA 93106
Attn: Bonnie Yoshida
(805) 893-2474, Fax (805) 893-8707
byoshida@umail.ucsb.edu

Southern San Joaquin Valley Information Center
Counties:  Fresno, Kern, Kings, Madera, Tulare
Dr. Robert Yohe, Coordinator
California State University, 9001 Stockdale Hwy, Bakersfield CA 93311-1099
Attn: Adele Baldwin
(661) 664-2289, Fax (661) 664-2415
abaldwin@csubak.edu;
http://www.csubak.edu/ssjvic

North Central Information Center
Counties:  Amador, El Dorado, Nevada, Placer, Sacramento, Yuba
Dr. Christopher Castaneda, Coordinator, Dr. Terry Castaneda, Coordinator
Dept of Anthropology, California State University, 6000 J St, Sacramento CA 95819-6106
Attn: David McCullough
(916) 278-6217, Fax (916) 278-5162
ncic@csus.edu
San Bernardino Archeological Information Center
Counties: San Bernardino
Robin Laska, Acting Coordinator
San Bernardino County Museum, 2024 Orange Tree Ln, Redlands CA 92374
(909) 307-2669 ext. 255, Fax (909) 307-0539
rlaska@sbcms.co.san-bernardino.ca.us

South Central Coastal Information Center
Counties: Los Angeles, Orange, Ventura
Margaret Lopez, Coordinator
California State University, Dept of Anthropology, 800 N State College Blvd, PO Box 6846, Fullerton CA 92834-8846
(714) 278-5395, Fax (714) 278-5542
sccic@fullerton.edu, http://anthro.fullerton.edu/sccic.html

Eastern Information Center
Counties: Inyo, Mono, Riverside
Dr. M. C. Hall, Coordinator
Dept of Anthropology, University of California, Riverside CA 92521-0418
Attn: Kay White
(909) 787-5745, Fax (909) 787-5409
eickw@ucrac1.ucr.edu

South Coastal Information Center
Counties: San Diego
Dr. Lynne Christenson, Coordinator
San Diego State University, 4283 El Cajon Blvd, San Diego CA 92105
(619) 594-6682, Fax (619) 594-1356
http://ssrl.sdsu.edu/scic/scic.html

Southeast Information Center
Counties: Imperial
Mr. Jay von Werlhof, Coordinator
Imperial Valley College Desert Museum, PO Box 430, Ocotillo CA 92259
physical location: 11 Frontage Rd
Attn: Karen Collins
(760) 358-7016, FAX (760) 358-7827
ivcdm@imperial.cc.ca.us

North Coastal Information Center
Counties: Del Norte, Humboldt
Dr. Thomas Gates, Coordinator
Yurok Tribe, 15900 Highway 101 N, Klamath CA 95548
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tgates@yuroktribe.nsn.us

60
The following excerpts from California law concerning Native American human remains are provided for your reference:

From **Chapter 1492, Statutes of 1982**, which added Section 7050.5 to the Health and Safety Code, amended Section 5097.94 of the Public Resources Code and added Sections 5097.98 and 5097.99 to the Public Resources Code:

(a) The Legislature finds as follows:

(1) Native American human burials and skeletal remains are subject to vandalism and inadvertent destruction at an increasing rate.
(2) State laws do not provide for the protection of these burials and remains from vandalism and destruction.
(3) There is no regular means at this time by which Native American descendents can make known their concerns regarding the treatment and disposition of Native American burials, skeletal remains, and items associated with Native American burials.

(b) The purpose of this act is:

(1) To provide protection to Native American human burials and skeletal remains from vandalism and inadvertent destruction.
(2) To provide a regular means by which Native American descendents can make known their concerns regarding the need for sensitive treatment and disposition of Native American burials, skeletal remains, and items associated with Native American burials.

From **Section 7050.5 of the Health and Safety Code**:

(b) In the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the human remains are discovered has determined, in accordance with Chapter 10 (commencing with Section 27460) of Part 3 of Division 2 of Title 3 of the Government Code, that the remains are not subject to the provisions of Section 27491 of the Government Code or any other related provisions of law concerning investigation of the circumstances, manner and cause of any death, and the recommendations concerning the treatment and disposition of the human remains have
been made to the person responsible for the excavation, or to his or her authorized representative, in the manner provided in Section 5097.98 of the Public Resources Code. The coroner shall make his or her determination within two working days from the time the person responsible for the excavation, or his or her authorized representative, notifies the coroner of the discovery or recognition of the human remains.

(c) If the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission.

From **Section 5097.94 of the Public Resources Code**:

The Commission shall have the following powers and duties:

(k) To mediate, upon application of either of the parties, disputes arising between landowners and known descendents relating to the treatment and disposition of Native American human burials, skeletal remains, and items associated with Native American burials.

The agreements shall provide protection to Native American human burials and skeletal remains from vandalism and inadvertent destruction and provide for sensitive treatment and disposition of Native American burials, skeletal remains, and associated grave goods consistent with the planned use of, or the approved project on, the land.

(l) To assist interested landowners in developing agreements with appropriate Native American groups for treating or disposing, with appropriate dignity, of the human remains and any items associated with Native American burials.

From **Section 5097.98 of the Public Resources Code**:

(a) Whenever the Commission receives notification of a discovery of Native American human remains from a county coroner pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, it shall immediately notify those persons it believes to be most likely descended from the deceased Native American. The descendents may, with the permission of the owner of the land, or his or her authorized representative, inspect the site of the discovery of the Native American remains and may recommend to the owner or the person responsible for the excavation work means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The descendents shall complete their inspection and make their recommendations within 24 hours of their notification by the Native American Heritage Commission. The recommendation may include the scientific removal and nondestructive analysis of human remains and items associated with Native American burials.

(b) Whenever the Commission is unable to identify a descendent, or the descendent identified fails to make a recommendation, or the landowner or his or her authorized representative rejects the recommendation of the descendent and the mediation provided for in subdivision (k) of Section 5097.94 fails to provide measures acceptable to the landowner, the landowner or his or
her authorized representative shall reinter the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance.

**SB 447 (Chapter 404, Statutes of 1987):**

On January 1, 1988, Senate Bill 447 went into effect. This legislation amended Section 5097.99 of the Public Resources Code, making it a felony to obtain or possess Native American remains or associated grave goods:

(a) No person shall obtain or possess any Native American artifacts or human remains which are taken from a Native American grave or cairn on or after January 1, 1984, except as otherwise provided by law or in accordance with an agreement reached pursuant to subdivision (1) of Section 5097.94 or pursuant to Section 5097.98.

(b) Any person who knowingly or willfully obtains or possesses any Native American artifacts or human remains which are taken from a Native American grave or cairn after January 1, 1988, except as otherwise provided by law or in accordance with an agreement reached pursuant to subdivision (1) of Section 5097.94 or pursuant to Section 5097.98, is guilty of a felony which is punishable by imprisonment in the state prison.

(c) Any person who removes, without authority of law, any Native American artifacts or human remains from a Native American grave or cairn with an intent to sell or dissect or with malice or wantonness is guilty of a felony which is punishable by imprisonment in the state prison.

**WHAT TO DO**

The following actions must be taken immediately upon the discovery of human remains:

Stop immediately and contact the County Coroner.

The coroner has two working days to examine human remains after being notified by the responsible person. If the remains are Native American, the Coroner has 24 hours to notify the Native American Heritage Commission.

The Native American Heritage Commission will immediately notify the person it believes to be the most likely descendent of the deceased Native American.

The most likely descendent has 24 hours to make recommendations to the owner, or representative, for the treatment or disposition, with proper dignity, of the human remains and grave goods.

If the descendent does not make recommendations within 24 hours the owner shall reinter the remains in an area of the property secure from further disturbance, or;

If the owner does not accept the descendant's recommendations, the owner or the descendent may request mediation by the Native American Heritage Commission.
Public Resources Code Section 5097.9
(Native American Historical, Cultural, and Sacred Sites)

CDF Editorial Note: The following section of the Public Resources Code authorizes the creation of the Native American Heritage Commission, establishes its powers and duties, requires state agency cooperation, prohibits impacts to Native American cemeteries, sacred and religious sites, and establishes notification procedures following discovery of Native American human remains. It also prohibits possession of human bones or artifacts taken from Native American graves. This PRC Section provides statutory authority for Native American Notification procedures in the forest practice rules, and the direction for notification policy for CDF projects during the archaeological impact analysis conducted by CDF.

5097.9. No public agency, and no private party using or occupying public property, or operating on public property, under a public license, permit, grant, lease, or contract made on or after July 1, 1977, shall in any manner whatsoever interfere with the free expression or exercise of Native American religion as provided in the United States Constitution and the California Constitution; nor shall any such agency or party cause severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity so require. The provisions of this chapter shall be enforced by the commission, pursuant to Sections 5097.94 and 5097.97.

The provisions of this chapter shall not be construed to limit the requirements of the Environmental Quality Act of 1970, Division 13 (commencing with Section 21000). The public property of all cities, counties, and city and county located within the limits of the city, county, and city and county, except for all parklands in excess of 100 acres, shall be exempt from the provisions of this chapter. Nothing in this section shall, however, nullify protections for Indian cemeteries under other statutes.

5097.91. There is in state government a Native American Heritage Commission, consisting of nine members appointed by the Governor with the advice and consent of the Senate.

5097.92. At least five of the nine members shall be elders, traditional people, or spiritual leaders of California Native American tribes, nominated by Native American organizations, tribes, or groups within the state. The executive secretary of the commission shall be appointed by the Governor.

5097.93. The members of the commission shall serve without compensation but shall be reimbursed their actual and necessary expenses.

5097.94. The commission shall have the following powers and duties:
(a) To identify and catalog places of special religious or social significance to Native Americans, and known graves and cemeteries of Native Americans on private lands. The identification and cataloging of known graves and cemeteries shall be completed on or before January 1, 1984.
The commission shall notify landowners on whose property such graves and cemeteries are determined to exist, and shall identify the Native American group most likely descended from those Native Americans who may be interred on the property.

(b) To make recommendations relative to Native American sacred places that are located on private lands, are inaccessible to Native Americans, and have cultural significance to Native Americans for acquisition by the state or other public agencies for the purpose of facilitating or assuring access thereto by Native Americans.

(c) To make recommendations to the Legislature relative to procedures which will voluntarily encourage private property owners to preserve and protect sacred places in a natural state and to allow appropriate access to Native American religionists for ceremonial or spiritual activities.

(d) To appoint necessary clerical staff.

(e) To accept grants or donations, real or in kind, to carry out the purposes of this chapter.

(f) To make recommendations to the Director of Parks and Recreation and the California Arts Council relative to the California State Indian Museum and other Indian matters touched upon by department programs.

(g) To bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, pursuant to Section 5097.97. If the court finds that severe and irreparable damage will occur or that appropriate access will be denied, and appropriate mitigation measures are not available, it shall issue an injunction, unless it finds, on clear and convincing evidence, that the public interest and necessity require otherwise. The Attorney General shall represent the commission and the state in litigation concerning affairs of the commission, unless the Attorney General has determined to represent the agency against whom the commission's action is directed, in which case the commission shall be authorized to employ other counsel. In any action to enforce the provisions of this subdivision the commission shall introduce evidence showing that such cemetery, place, site, or shrine has been historically regarded as a sacred or sanctified place by Native American people and represents a place of unique historical and cultural significance to an Indian tribe or community.

(h) To request and utilize the advice and service of all federal, state, local, and regional agencies.

(i) To assist Native Americans in obtaining appropriate access to sacred places that are located on public lands for ceremonial or spiritual activities.

(j) To assist state agencies in any negotiations with agencies of the federal government for the protection of Native American sacred places that are located on federal lands.

(k) To mediate, upon application of either of the parties, disputes arising between landowners and known descendants relating to the treatment and disposition of Native American human burials, skeletal remains, and items associated with Native American burials.

The agreements shall provide protection to Native American human burials and skeletal remains from vandalism and inadvertent destruction and provide for sensitive treatment and disposition of Native American burials, skeletal remains, and associated grave goods consistent with the planned use of, or the approved project on, the land.

(l) To assist interested landowners in developing agreements with appropriate Native American groups for treating or disposing, with appropriate dignity, of the human remains and any items associated with Native American burials.
5097.95. Each state and local agency shall cooperate with the commission in carrying out its duties under this chapter. Such cooperation shall include, but is not limited to, transmitting copies, at the commission's expense, of appropriate sections of all environmental impact reports relating to property identified by the commission as of special religious significance to Native Americans or which is reasonably foreseeable as such property.

5097.96. The commission may prepare an inventory of Native American sacred places that are located on public lands and shall review the current administrative and statutory protections accorded to such places. The commission shall submit a report to the Legislature no later than January 1, 1979, in which the commission shall report its findings as a result of these efforts and shall recommend such actions as the commission deems necessary to preserve these sacred places and to protect the free exercise of the Native American religions.

5097.97. In the event that any Native American organization, tribe, group, or individual advises the commission that a proposed action by a public agency may cause severe or irreparable damage to a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, or may bar appropriate access thereto by Native Americans, the commission shall conduct an investigation as to the effect of the proposed action. Where the commission finds, after a public hearing, that the proposed action would result in such damage or interference, the commission may recommend mitigation measures for consideration by the public agency proposing to take such action. If the public agency fails to accept the mitigation measures, and if the commission finds that the proposed action would do severe and irreparable damage to a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, the commission may ask the Attorney General to take appropriate legal action pursuant to subdivision (g) of Section 5097.94.

5097.98. (a) Whenever the commission receives notification of a discovery of Native American human remains from a county coroner pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, it shall immediately notify those persons it believes to be most likely descended from the deceased Native American. The descendents may, with the permission of the owner of the land, or his or her authorized representative, inspect the site of the discovery of the Native American remains and may recommend to the owner or the person responsible for the excavation work means for treating or disposing, with appropriate dignity, the human remains and any associated grave goods. The descendents shall complete their inspection and make their recommendation within 24 hours of their notification by the Native American Heritage Commission. The recommendation may include the scientific removal and nondestructive analysis of human remains and items associated with Native American burials.

(b) Whenever the commission is unable to identify a descendent, or the descendent identified fails to make a recommendation, or the landowner or his or her authorized representative rejects the recommendation of the descendent and the mediation provided for in subdivision (k) of Section 5097.94 fails to provide measures acceptable to the landowner, the landowner or his or her authorized representative shall reinter the human remains and items associated with Native American burials with appropriate dignity on the property in a location not subject to further subsurface disturbance.
(c) Notwithstanding the provisions of Section 5097.9, the provisions of this section, including those actions taken by the landowner or his or her authorized representative to implement this section and any action taken to implement an agreement developed pursuant to subdivision (l) of Section 5097.94, shall be exempt from the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(d) Notwithstanding the provisions of Section 30244, the provisions of this section, including those actions taken by the landowner or his or her authorized representative to implement this section, and any action taken to implement an agreement developed pursuant to subdivision (l) of Section 5097.94 shall be exempt from the requirements of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000)).

5097.99. (a) No person shall obtain or possess any Native American artifacts or human remains which are taken from a Native American grave or cairn on or after January 1, 1984, except as otherwise provided by law or in accordance with an agreement reached pursuant to subdivision (l) of Section 5097.94 or pursuant to Section 5097.98.

(b) Any person who knowingly or willfully obtains or possesses any Native American artifacts or human remains which are taken from a Native American grave or cairn after January 1, 1988, except as otherwise provided by law or in accordance with an agreement reached pursuant to subdivision (l) of Section 5097.94 or pursuant to Section 5097.98, is guilty of a felony which is punishable by imprisonment in the state prison.

(c) Any person who removes, without authority of law, any Native American artifacts or human remains from a Native American grave or cairn with an intent to sell or dissect or with malice or wantonness is guilty of a felony which is punishable by imprisonment in the state prison.

5097.991. It is the policy of the state that Native American remains and associated grave artifacts shall be repatriated.
An act to add Chapter 5 (commencing with Section 8010) to Part 2 of Division 7 of the Health and Safety Code, relating to human remains.

LEGISLATIVE COUNSEL'S DIGEST

AB 978, Steinberg. Native American graves protection and repatriation.

Existing law contains provisions regarding the regulation of human remains disposal and burials.

This bill, the California Native American Graves Protection and Repatriation Act of 2001, would require all state agencies and museums that receive state funding and that have possession or control over collections of human remains or cultural items, as defined, to complete an inventory and summary of these remains and items on or before January 1, 2003, with certain exceptions, would provide a process for the identification and repatriation of these items to the appropriate tribes, and would authorize the imposition of civil penalties for failure to comply with the requirements of this bill. The bill would
also establish the Repatriation Oversight Commission, composed of 10 members, with specified duties relating to the repatriation process.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Chapter 5 (commencing with Section 8010) is added to Part 2 of Division 7 of the Health and Safety Code, to read:

CHAPTER 5. CALIFORNIA NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION


8010. This chapter shall be known, and may be cited as the California Native American Graves Protection and Repatriation Act of 2001.

8011. It is the intent of the Legislature to do all of the following:

(a) Provide a seamless and consistent state policy to ensure that all California Indian human remains and cultural items be treated with dignity and respect.

(b) Apply the state's repatriation policy consistently with the provisions of the Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), which was enacted in 1990.

(c) Facilitate the implementation of the provisions of the federal Native American Graves Protection and Repatriation Act with respect to publicly funded agencies and museums in California.

(d) Encourage voluntary disclosure and return of remains and cultural items by an agency or museum.

(e) Provide a mechanism whereby lineal descendants and culturally affiliated California Indian tribes that file repatriation claims for human remains and cultural items under the Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) or under this chapter with California state agencies and museums may request assistance from the commission in ensuring that state agencies and museums are responding to those claims in a timely manner and in facilitating the resolution of disputes regarding those claims.

(f) Provide a mechanism whereby California tribes that are not federally recognized may file claims with agencies...
and museums for repatriation of human remains and cultural items.

Article 2. State Cultural Affiliation and Repatriation

8012. As used in this chapter, terms shall have the same meaning as in the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), as interpreted by federal regulations, except that the following terms shall have the following meaning:

(a) "Agency" means any division, department, bureau, commission, board, council, city, county, city and county, district, or other political subdivision of the state, but does not include any school district.

(b) "Burial site" means, except for cemeteries and graveyards protected under existing state law, any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which human remains were intentionally deposited as a part of the death rites or ceremonies of a culture.

(c) "Commission" means the Repatriation Oversight Commission established pursuant to Article 3 (commencing with Section 8025).

(d) "Cultural items" shall have the same meaning as defined by Section 3001 of Title 25 of the United States Code, except that it shall mean only those items that originated in California.

(e) "Control" means having ownership of human remains and cultural items sufficient to lawfully permit a museum or agency to treat the object as part of its collection for purposes of this chapter, whether or not the human remains and cultural items are in the physical custody of the museum or agency. Items on loan to a museum or agency from another person, museum, or agency shall be deemed to be in the control of the lender, and not the borrowing museum or agency.

(f) "State cultural affiliation" means that there is a relationship of shared group identity that can reasonably be traced historically or prehistorically between members of a present-day California Indian Tribe, as defined in subdivision (i), and an identifiable earlier tribe or group. Cultural affiliation is established when the preponderance of the evidence, based on geography, kinship, biology, archaeology, linguistics, folklore, oral tradition, historical evidence, or other information or expert opinion, reasonably leads to such a conclusion.
(g) "Inventory" means an itemized list that summarizes the collection of human remains and associated funerary objects in the possession or control of an agency or museum. This itemized list may be the inventory list required under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

(h) "Summary" means a document that summarizes the collection of unassociated funerary objects, sacred objects, or objects of cultural patrimony in the possession or control of an agency or museum. This document may be the summary prepared under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

(i) "Museum" means an entity, including a higher educational institution, excluding school districts, that receives state funds.

(j) "California Indian tribe" means any tribe located in California to which any of the following applies:

1. It meets the definition of Indian tribe under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

2. It is not recognized by the federal government, but is indigenous to the territory that is now known as the State of California, and both of the following apply:
   (A) It is listed in the Bureau of Indian Affairs Branch of Acknowledgement and Research petitioner list pursuant to Section 82.1 of Title 25 of the Federal Code of Regulations.
   (B) It is determined by the commission to be a tribe that is eligible to participate in the repatriation process set forth in this chapter. The commission shall publish a document that lists the California tribes meeting these criteria, as well as authorized representatives to act on behalf of the tribe in the consultations required under paragraph (4) of subdivision (a) of Section 8013 and in matters pertaining to repatriation under this chapter. Criteria that shall guide the commission in making the determination of eligibility shall include, but not be limited to, the following:
      (i) A continuous identity as an autonomous and separate tribal government.
      (ii) Holding itself out as a tribe.
      (iii) The tribe as a whole has demonstrated aboriginal ties to the territory now known as the State of California and its members can demonstrate lineal descent from the
identifiable earlier groups that inhabited a particular tribal territory.

(iv) Recognition by the Indian community and non-Indian entities as a tribe.

(v) Demonstrated membership criteria.

(k) "Possession" means having physical custody of human remains and cultural items with a sufficient legal interest to lawfully treat the human remains and cultural items as part of a collection. The term does not include human remains and cultural items on loan to an agency or museum.

(l) "Preponderance of the evidence" means that the party's evidence on a fact indicates that it is more likely than not that the fact is true.

8013. (a) Any agency or museum that has possession or control over collections of California Native American human remains and associated funerary objects shall complete an inventory of all these remains and associated funerary objects and, to the extent possible based on all information possessed by the agency or museum, do all of the following:

(1) Identify the geographical location, state cultural affiliation, and the circumstances surrounding their acquisition.

(2) List in the inventory the human remains and associated funerary objects that are clearly identifiable as to state cultural affiliation with California Indian tribes. These items shall be listed first in order to expedite the repatriation of these items.

(3) List the human remains and associated funerary objects that are not clearly identifiable by cultural affiliation but that, given the totality of circumstances surrounding their acquisition and characteristics are determined by a reasonable belief to be human remains and associated funerary objects with a state cultural affiliation with one or more California Indian tribes. Consult with California Indian tribes believed by the agency or museum to be affiliated with the items, during the compilation of the inventory as part of the determination of affiliation. If the agency or museum cannot determine which California Indian tribes are believed to be affiliated with the items, then tribes that may be affiliated with the items shall be consulted during the compilation of the inventory.

(b) Any agency or museum that has possession or control over collections of California Indian unassociated funerary objects, sacred objects, or objects of cultural patrimony
shall provide a written summary of the objects based upon available information held by the agency or museum. The summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition, and state cultural affiliation, where readily ascertainable. The summary shall be in lieu of an object-by-object inventory. Each agency or museum, following preparation of a summary pursuant to this subdivision, shall consult with California Indian tribes and tribally authorized government officials and traditional religious leaders.

(c) Each agency or museum shall complete the inventories and summaries required by subdivisions (a) and (b) by January 1, 2003, or within one year of the date on which the commission issues the list of California Indian tribes provided for under paragraph (2) of subdivision (i) of Section 8012, whichever is later. To the extent that this section requires the inventory and summary to include items not required to be included in the inventory and summary under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), the agency or museum shall supplement its inventory and summary under this section to include those additional items.

(d) Upon request of a California Indian tribe, a museum or agency shall supply additional available documentation to supplement the information required by subdivisions (a) and (b). For purposes of this paragraph, "documentation" means a summary of existing museum or agency records, including inventories or catalogs, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding the acquisition and accession of California Native American human remains and cultural items subject to this section. This section shall not be construed to authorize the completion or initiation of any scientific study of human remains or cultural items.

(e) Within 90 days of completing the inventory and summary specified in subdivisions (a) and (b), the agency or museum shall provide a copy of the inventory and summary to the commission. The commission shall, in turn, publish notices of completion of summaries and inventories on its Web site for 30 days, and make the inventory and summary available to any requesting tribe or state affiliated tribe.

(f) The inventory and summary specified in subdivisions (a) and (b) shall be completed by all agencies and museums that have possession or control of Native American human
remains or cultural items, regardless of whether the agency or museum is also subject to the requirements of the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.). Any inventory or summary, or any portion of an inventory or summary, that has been created to meet the requirements of the Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) may be used to meet the requirements of this chapter, if appropriate.

(g) Any agency or museum that has completed inventories and summaries on or before January 1, 2002, as required by the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) shall be deemed to be in compliance with this section provided that the agency or museum does both of the following:

1. Provide a copy of the inventories and summaries to the commission by July 1, 2002, or within 30 days of the date on which the commission is formed, whichever is later.

2. Prepare supplementary inventories and summaries as necessary to comply with subdivisions (a) and (b) for those portions of their collections that originate from California and that have not been determined to be culturally affiliated with federally recognized tribes which, in the case of inventories, are those portions of the collections of an agency or museum that have been identified on their inventories under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) as "culturally unidentifiable," by January 1, 2003, or within one year of the date on which the commission issues the list of California Indian tribes provided for under paragraph (2) of subdivision (j) of Section 8012, whichever is later.

(h) If the agency or museum determines that it does not have in its possession or control any human remains or cultural items, the agency or museum shall, in lieu of an inventory or summary, state that finding in a letter to the commission at the commission's request.

(i) Following completion of the initial inventories and summaries specified in subdivisions (a) and (b), each agency or museum shall update its inventories and summaries whenever the agency or museum receives possession or control of human remains or cultural items that were not included in the initial inventories and summaries. Upon completion, the agency or museum shall provide a copy of its updated inventories and summaries to the commission. Nothing in this section shall be construed to mean that a museum or agency may delay repatriation of items in the
initial inventory until the updating of all inventories and summaries is completed.

8014. A tribe claiming state cultural affiliation and requesting the return of human remains and cultural items listed in the inventory or summary of an agency or museum or that requests the return of human remains and cultural items that are not listed in the inventory but are believed to be in the possession or control of the agency or museum in the state shall do both of the following:
(a) File a written request for the human remains and cultural items with the commission and the agency or museum believed to have possession or control.
(b) Provide evidence that would establish that items claimed are cultural items and are culturally affiliated with the California Indian tribe making the claim. Evidence of cultural affiliation need not be provided in cases where cultural affiliation is reasonably established by the inventory or summary.

8015. (a) Upon receiving a written request for repatriation of an item on the inventory, the commission shall forward a copy of the request to the agency or museum in possession of the item, if the criteria specified in subdivision (b) of Section 8016 have been met. At this time, the commission shall also publish the request for repatriation on its Web site for 30 days. If there are no other requests for a particular item and there is not unresolved objection pursuant to subdivision (c) of Section 8016 within 90 days of the date of distribution and publication of the inventory or summary and completion of any federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) repatriation process related to the item, the agency or museum in possession of the item shall repatriate the requested item to the requesting party. This repatriation shall occur within 30 days after the last day of the 90-day period, or on a date agreed upon by all parties.
(b) Nothing in this section shall be construed to prohibit any requesting party, a tribe, an agency, or a museum from coordinating directly with each other on repatriation, or to prohibit the repatriation at any time of any undisputed items to the requesting party prior to completion of any requirements set forth in this chapter. The commission shall receive, for their records, copies of all repatriation agreements and shall have the power to enforce these agreements.
8016. (a) If there is more than one request for repatriation for the same item, or there is a dispute between the requesting party and the agency or museum, or if a dispute arises in relation to the repatriation process, the commission shall notify the affected parties of this fact and the cultural affiliation of the item in question shall be determined in accordance with this section.

(b) Any agency or museum receiving a repatriation request pursuant to subdivision (a) shall repatriate human remains and cultural items if all of the following criteria have been met:

(1) The requested human remains or cultural items meet the definitions of human remains or cultural items that are subject to inventory requirements under subdivision (a) of Section 8013.

(2) The state cultural affiliation of the human remains or cultural items is established as required under subdivision (f) of Section 8012.

(3) The agency or museum is unable to present evidence that, if standing alone before the introduction of evidence to the contrary, would support a finding that the agency or museum has a right of possession to the requested cultural items.

(4) None of the exemptions listed in Section 10.10(c) of Title 43 of the Federal Code of Regulations apply.

(5) All other applicable requirements of regulations adopted under the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.), contained in Part 10 of Title 43 of the Code of Federal Regulations, have been met.

(c) Within 30 days after notice has been provided by the commission, the museum or agency shall have the right to file with the commission any objection to the requested repatriation, based on its good faith belief that the requested human remains or cultural items are not culturally affiliated with the requesting California tribe or are not subject to repatriation under this chapter.

(d) The disputing parties shall submit documentation describing the nature of the dispute, in accordance with standard mediation practices and the commission's procedures, to the commission, which shall, in turn, forward the documentation to the opposing party or
parties. The disputing parties shall meet within 30 days of the date of the mailing of the documentation with the goal of settling the dispute.

(e) If, after meeting pursuant to subdivision (b), the parties are unable to settle the dispute, the commission, or a certified mediator designated by the commission in accordance with subdivision (b) of Section 8026, shall mediate the dispute.

(f) Each disputing party shall submit complaints and supporting evidence to the commission or designated mediator and the other opposing parties detailing their positions on the disputed issues in accordance with standard mediation practices and the commission's mediation procedures. Each party shall have 20 days from the date the complaint and supporting evidence were mailed to respond to the complaints. All responses shall be submitted to the opposing party or parties and the commission or designated mediator.

(g) The commission or designated mediator shall review all complaints, responses, and supporting evidence submitted. Within 20 days after the date of submission of responses, the commission or designated mediator shall hold a mediation session and render a decision within seven days of the date of the mediation session.

(h) When the disposition of any items are disputed, the party in possession of the items shall retain possession until the mediation process is completed. No transfer of items shall occur until the dispute is resolved.

(i) Tribal oral histories, documentations, and testimonies shall not be afforded less evidentiary weight than other relevant categories of evidence on account of being in those categories.

(j) If the parties are unable to resolve a dispute through mediation, the dispute shall be resolved by the commission. The determination of the commission shall be deemed to constitute a final administrative remedy. Any party to the dispute seeking a review of the determination of the commission is entitled to file an action in the superior court seeking an independent judgement on the record as to whether the commission's decision is supported by a preponderance of the evidence. The independent review shall not constitute a de novo review of a decision by the commission, but shall be limited to a review of the evidence on the record. Petitions for review shall be filed with the court not later than 30 days after the final decision of the commission.
8017. If there is a committee or group of tribes authorized by their respective tribal governments to accept repatriation of items originating from their region and culturally affiliated with those tribal governments, then the items may be repatriated to those groups.

8018. An agency or museum that repatriates human remains and cultural items in good faith pursuant to this chapter is not liable for claims by an aggrieved party or for claims of breach of a fiduciary duty or the public trust or of violation of state law that are inconsistent with this chapter. No action shall be brought on behalf of the state or any other entity or person for damages or for injunctive relief for a claim of improper disposition of human remains or cultural items if the agency or museum has complied with the provisions of this chapter.

8019. Nothing in this section shall be construed to prohibit the governing body of a California Indian tribe or group authorized by Section 8017 from expressly relinquishing control over any human remains or control or title to any cultural item.

8020. Notwithstanding any other provision of law, and upon the request of any party or an intervenor, the commission or designated mediator may close part of a mediation session to the public if the commission or designated mediator finds that information required at the mediation session may include identification of the specific location of a burial site, human remains and cultural items or that information necessary for a determination regarding repatriation may compromise or interfere with any religious practice or custom.

8021. The filing of an appeal by either party automatically stays an order of the commission or a designated mediator on repatriation of human remains and cultural items.

Article 3. Repatriation Oversight Commission

8025. (a) There is hereby established the Repatriation Oversight Commission composed of 10 members as follows:

(1) Two voting members appointed by the Governor from nominations made by federally recognized California tribes within the state. One member each shall represent the central and southern areas of the state.
(2) Two voting members appointed by the Speaker of the Assembly from nominations made by federally recognized California tribes within the state. One member each shall represent the northern and southern areas of the state.

(3) Two voting members appointed by the Senate Committee on Rules from nominations made by federally recognized California tribes within the state. One member each shall represent the northern and central areas of the state.

(4) One voting member appointed by the Governor from nominations submitted by state agencies or state-funded universities and colleges.

(5) One voting member appointed by the Governor from nominations submitted by the University of California.

(6) One voting member appointed by the Governor from nominations submitted by the California Association of Museums.

(7) One voting member of a nonfederally recognized tribe appointed by the Governor from nominations submitted by the Native American Heritage Commission.

(b) The executive secretary of the commission shall be appointed by the Governor and shall be an ex officio nonvoting member of the commission.

8026. The commission shall meet when necessary, and at least quarterly shall perform the duties specified in this section including, but not limited to, the following:

(a) Order the repatriation of human remains and cultural items in accordance with this chapter.

(b) Establish mediation procedures and, upon application of the parties involved, mediate disputes between California tribes and museums and agencies relating to the disposition of human remains and cultural items. The commission shall have the power of subpoena for purposes of discovery and may impose civil penalties against any agency or museum that intentionally or willfully fails to comply with the provisions of this chapter. Members of the commission shall receive training in mediation for purposes of this subdivision. The commission may delegate its responsibility to mediate disputes to a certified mediator.

(c) Administer the budget of the commission.

(d) Establish and maintain a website for communication between tribes and museums and agencies.

(e) Upon the request of California tribes or museums and agencies, analyze and make decisions regarding providing financial assistance to aid in specific repatriation activities.
(f) Accept grants or donations, real or in-kind, to carry out the purposes of this chapter.

(g) By making recommendations to the Legislature, assist California tribes in obtaining the dedication of appropriate state lands for the purposes of reinterment of human remains and cultural items.

(h) Request and utilize the advice and services of all federal, state, and local agencies as necessary in carrying out the purposes of this chapter.

(i) Prepare and submit to the Legislature an annual report detailing commission activities, disbursement of funds, and dispute resolutions relating to the repatriation activities under this chapter.

(j) Refer any known noncompliance with the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.) to the United States Attorney General and the Secretary of the Interior.

(k) Impose administrative civil penalties against any agency or museum that is determined by the commission to have violated any provision of this chapter.

(l) Establish those rules and regulations the commission determines to be necessary for the administration of this chapter.

8027. (a) Members of the commission shall not receive a salary but shall be entitled to reimbursement for actual expenses incurred in the performance of their duties.

(b) The chairperson of the commission shall be elected by the members.

8028. (a) The term of any member of the commission shall be for three years, and each member shall serve no more than two consecutive terms. Staggered terms shall be established by the drawing of lots at the first meeting of the commission so that a simple majority of the members shall initially serve a three-year term, and the remainder initially a two-year term.

(b) If a vacancy occurs, a replacement shall be named by the same constituency as the constituency that was represented by the member whose membership is being replaced. Replacements shall serve only for the remainder of the vacant member's term.

Article 4. Penalties and Enforcement Procedures

8029. (a) Any agency or museum that fails to comply with the requirements of this chapter may be assessed a
civil penalty by the commission, not to exceed twenty thousand dollars ($20,000) for each violation, pursuant to regulations adopted by the commission. A penalty assessed under this section shall be determined on the record after the opportunity for a hearing.

(b) In assessing a penalty under this section, the commission shall consider the following factors, in addition to any other relevant factors, in determining the amount of the penalty:

(1) The archaeological, historical, or commercial value of the item involved.

(2) The cultural and spiritual significance of the item involved.

(3) The damages suffered, both economic and noneconomic, by the aggrieved party.

(4) The number of violations that have occurred.

(c) If any agency or museum fails to pay a civil penalty pursuant to a final order issued by the commission and the time for judicial review has passed or the party subject to the civil penalty has appealed the penalty or after a final judgment has been rendered on appeal of the order, the Attorney General shall act on behalf of the commission to institute a civil action in an appropriate court to collect the penalty.

(d) An agency or museum shall not be subject to civil penalties for actions taken in good faith to comply with the federal Native American Graves Protection and Repatriation Act (25 U.S.C. Sec. 3001 et seq.).

8030. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.
CHAPTER 905
An act to amend Section 815.3 of the Civil Code, to amend Sections 65040.2, 65092, 65351, 65352, and 65560 of, and to add Sections 65352.3, 65352.4, and 65562.5 to the Government Code, relating to traditional tribal cultural places.

[Approved by Governor September 29, 2004. Filed with Secretary of State September 30, 2004.]

LEGISLATIVE COUNSEL’S DIGEST
SB 18, Burton. Traditional tribal cultural places.
(I) Existing law establishes the Native American Heritage Commission and authorizes the commission to bring an action to prevent severe and irreparable damage to, or assure appropriate access for Native Americans to, a Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property. Existing law authorizes only specified entities or organizations, including certain tax-exempt nonprofit organizations, and local government entities to acquire and hold conservation easements, if those entities and organizations meet certain conditions. This bill would include a federally recognized California Native American tribe or a nonfederally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission, among those entities and organizations that may acquire and hold conservation easements, as specified.

(2) Existing law requires the Office of Planning and Research to implement various long range planning and research policies and goals that are intended to shape statewide development patterns and significantly influence the quality of the state’s environment and, in connection with those responsibilities, to adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans. This bill would require that, by March 1, 2005, the guidelines contain advice, developed in consultation with the Native American Heritage Commission, for consulting with California Native American tribes for the preservation of, or the mitigation of impacts to, specified Native American places, features, and objects. The bill would also require those guidelines to address procedures for identifying the appropriate California Native American tribes, for continuing to protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects, and for facilitating voluntary landowner participation to preserve and protect the specific identity, location, character, and use of those places, features, and objects. The bill would define a California Native American tribe that is on the contact list maintained by the Native American Heritage Commission as a “person” for purposes of provisions relating to public notice of hearings relating to local planning issues.

(3) Existing law requires a planning agency during the preparation or amendment of the general plan, to provide opportunities for the involvement of citizens, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the city or county deems appropriate. This bill would require the planning agency on and after March 1, 2005, to refer the proposed action to California Native American tribes, as specified, and also provide opportunities for involvement of California Native American tribes. The bill would require that, prior to the adoption or amendment of a city or county’s general plan, the city or county conduct consultations with California Native American tribes for the
purpose of preserving specified places, features, and objects that are located within the city or county's jurisdiction. The bill would define the term “consultation” for purposes of those provisions. By imposing new duties on local governments with respect to consultations regarding the protection and preservation of California Native American historical, cultural, and sacred sites, the bill would impose a state-mandated local program. On and after March 1, 2005, this bill would include open space for the protection of California Native American historical, cultural, and sacred sites within the definition of “local open-space plan” for purposes of provisions governing the preparation of the open-space element of a city and county general plan.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000. This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason. With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Current state law provides a limited measure of protection for California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places.

(2) Existing law provides limited protection for Native American sanctified cemeteries, places of worship, religious, ceremonial sites, sacred shrines, historic or prehistoric ruins, burial grounds, archaeological or historic sites, inscriptions made by Native Americans at those sites, archaeological or historic Native American rock art, and archaeological or historic features of Native American historic, cultural, and sacred sites.

(3) Native American places of prehistoric, archaeological, cultural, spiritual, and ceremonial importance reflect the tribes' continuing cultural ties to the land and to their traditional heritages.

(4) Many of these historical, cultural, and religious sites are not located within the current boundaries of California Native American reservations and rancherias, and therefore are not covered by the protectionist policies of tribal governments.

(b) In recognition of California Native American tribal sovereignty and the unique relationship between California local governments and California tribal governments, it is the intent of the Legislature, in enacting this act, to accomplish all of the following:

(1) Recognize that California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places are essential elements in tribal cultural traditions, heritages, and identities.

(2) Establish meaningful consultations between California Native American tribal governments and California local governments at the earliest possible point in the local government land use planning process so that these places can be identified and considered.

(3) Establish government-to-government consultations regarding potential means to preserve those places, determine the level of necessary confidentiality of their specific location, and develop proper treatment and management plans.
(4) Ensure that local and tribal governments have information available early in the land use planning process to avoid potential conflicts over the preservation of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places.
(5) Enable California Native American tribes to manage and act as caretakers of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places.
(6) Encourage local governments to consider preservation of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places in their land use planning processes by placing them in open space.
(7) Encourage local governments to consider the cultural aspects of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places early in land use planning processes.

SEC. 2. Section 815.3 of the Civil Code is amended to read:
815.3. Only the following entities or organizations may acquire and hold conservation easements:
(a) A tax-exempt nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code and qualified to do business in this state which has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.
(b) The state or any city, county, city and county, district, or other state or local governmental entity, if otherwise authorized to acquire and hold title to real property and if the conservation easement is voluntarily conveyed. No local governmental entity may condition the issuance of an entitlement for use on the applicant’s granting of a conservation easement pursuant to this chapter.
(c) A federally recognized California Native American tribe or a nonfederally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission to protect a California Native American prehistoric, archaeological, cultural, spiritual, or ceremonial place, if the conservation easement is voluntarily conveyed.

SEC. 3. Section 65040.2 of the Government Code is amended to read:
65040.2. (a) In connection with its responsibilities under subdivision (l) of Section 65040, the office shall develop and adopt guidelines for the preparation and content of the mandatory elements required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3. For purposes of this section, the guidelines prepared pursuant to Section 50459 of the Health and Safety Code shall be the guidelines for the housing element required by Section 65302. In the event that additional elements are hereafter required in city and county general plans by Article 5 (commencing with Section 65300) of Chapter 3, the office shall adopt guidelines for those elements within six months of the effective date of the legislation requiring those additional elements.
(b) The office may request from each state department and agency, as it deems appropriate, and the department or agency shall provide, technical assistance in readopting, amending, or repealing the guidelines.
(c) The guidelines shall be advisory to each city and county in order to provide assistance in preparing and maintaining their respective general plans.
(d) The guidelines shall contain the guidelines for addressing environmental justice matters developed pursuant to Section 65040.12.
(e) The guidelines shall contain advice including recommendations for best practices to allow for collaborative land use planning of adjacent civilian and military lands and facilities. The guidelines shall encourage enhanced land use compatibility between civilian lands and any adjacent or nearby military facilities through the examination of potential impacts upon one another.

(f) The guidelines shall contain advice for addressing the effects of civilian development on military readiness activities carried out on all of the following:

1. Military installations.
2. Military operating areas.
3. Military training areas.
4. Military training routes.
5. Military airspace.
6. Other territory adjacent to those installations and areas.

(g) By March 1, 2005, the guidelines shall contain advice, developed in consultation with the Native American Heritage Commission, for consulting with California Native American tribes for all of the following:

1. The preservation of, or the mitigation of impacts to, places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code.
2. Procedures for identifying through the Native American Heritage Commission the appropriate California Native American tribes.
3. Procedures for continuing to protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects.
4. Procedures to facilitate voluntary landowner participation to preserve and protect the specific identity, location, character, and use of those places, features, and objects.

(h) The office shall provide for regular review and revision of the guidelines established pursuant to this section.

SEC. 4. Section 65092 of the Government Code is amended to read:

65092. (a) When a provision of this title requires notice of a public hearing to be given pursuant to Section 65090 or 65091, the notice shall also be mailed or delivered at least 10 days prior to the hearing to any person who has filed a written request for notice with either the clerk of the governing body or with any other person designated by the governing body to receive these requests. The local agency may charge a fee which is reasonably related to the costs of providing this service and the local agency may require each request to be annually renewed.

(b) As used in this chapter, “person” includes a California Native American tribe that is on the contact list maintained by the Native American Heritage Commission.

SEC. 5. Section 65351 of the Government Code is amended to read:

65351. During the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement of citizens California Native American Indian tribes, public agencies, public utility companies, and civic, education, and other community groups, through public hearings and any other means the city or county deems appropriate.

SEC. 6. Section 65352 of the Government Code is amended to read:

65352. (a) Prior to action by a legislative body to adopt or substantially amend a general plan, the planning agency shall refer the proposed action to all of the following entities:
(1) A city or county, within or abutting the area covered by the proposal, and a special district that may be significantly affected by the proposed action, as determined by the planning agency.
(2) An elementary, high school, or unified school district within the area covered by the proposed action.
(3) The local agency formation commission.
(4) An areawide planning agency whose operations may be significantly affected by the proposed action, as determined by the planning agency.
(5) A federal agency if its operations or lands within its jurisdiction may be significantly affected by the proposed action, as determined by the planning agency.
(6) A public water system, as defined in Section 116275 of the Health and Safety Code, with 3,000 or more service connections, that serves water to customers within the area covered by the proposal. The public water system shall have at least 45 days to comment on the proposed plan, in accordance with subdivision (b), and to provide the planning agency with the information set forth in Section 65352.5.
(7) The Bay Area Air Quality Management District for a proposed action within the boundaries of the district.
(8) On and after March 1, 2005, a California Native American tribe, that is on the contact list maintained by the Native American Heritage Commission, with traditional lands located within the city or county's jurisdiction.

(b) Each entity receiving a proposed general plan or amendment of a general plan pursuant to this section shall have 45 days from the date the referring agency mails it or delivers it in which to comment unless a longer period is specified by the planning agency.
(c) (1) This section is directory, not mandatory, and the failure to refer a proposed action to the other entities specified in this section does not affect the validity of the action, if adopted.
(2) To the extent that the requirements of this section conflict with the requirements of Chapter 4.4 (commencing with Section 65919), the requirements of Chapter 4.4 shall prevail.

SEC. 7. Section 65352.3 is added to the Government Code, to read:
65352.3. (a) (1) Prior to the adoption or any amendment of a city or county’s general plan, proposed on or after March 1, 2005, the city or county shall conduct consultations with California Native American tribes that are on the contact list maintained by the Native American Heritage Commission for the purpose of preserving or mitigating impacts to places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code that are located within the city or county’s jurisdiction.
(2) From the date on which a California Native American tribe is contacted by a city or county pursuant to this subdivision, the tribe has 90 days in which to request a consultation, unless a shorter timeframe has been agreed to by that tribe.
(b) Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Section 65040.2, the city or county shall protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects.

SEC. 8. Section 65352.4 is added to the Government Code, to read:
65352.4. For purposes of Section 65351, 65352.3, and 65562.5, “consultation” means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties’ cultural values and, where feasible, seeking
agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.

SEC. 9. Section 65560 of the Government Code is amended to read:
65560. (a) "Local open-space plan" is the open-space element of a county or city general plan adopted by the board or council, either as the local open-space plan or as the interim local open-space plan adopted pursuant to Section 65563.
(b) "Open-space land" is any parcel or area of land or water that is essentially unimproved and devoted to an open-space use as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following:
(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species; areas required for ecologic and other scientific study purposes; rivers, streams, bays and estuaries; areas adjacent to military installations, military training routes, and restricted airspace that can provide additional buffer zones to military activities and complement the resource values of the military lands; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands.
(2) Open space used for the managed production of resources, including but not limited to, forest lands, rangeland, agricultural lands and areas of economic importance for the production of food or fiber; areas required for recharge of ground water basins; bays, estuaries, marshes, rivers and streams which are important for the management of commercial fisheries; and areas containing major mineral deposits, including those in short supply.
(3) Open space for outdoor recreation, including, but not limited to, areas of outstanding scenic, historic and cultural value; areas particularly suited for park and recreation purposes, including access to lakeshores, beaches, and rivers and streams; and areas which serve as links between major recreation and open-space reservations, including utility easements, banks of rivers and streams, trails, and scenic highway corridors.
(4) Open space for public health and safety, including, but not limited to, areas which require special management or regulation because of hazardous or special conditions such as earthquake fault zones, unstable soil areas, flood plains, watersheds, areas presenting high fire risks, areas required for the protection of water quality and water reservoirs and areas required for the protection and enhancement of air quality.
(5) Open space for the protection of places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code.

SEC. 10. Section 65562.5 is added to the Government Code, to read:
65562.5. On and after March 1, 2005, if land designated, or proposed to be designated as open space, contains a place, feature, or object described in Sections 5097.9 and 5097.995 of the Public Resources Code, the city or county in which the place, feature, or object is located shall conduct consultations with the California Native American tribe, if any, that has given notice pursuant to Section 65092 for the purpose of determining the level of confidentiality required to protect the specific identity, location, character, or use of the place, feature, or object and for the purpose of developing treatment with appropriate dignity of the place, feature, or object in any corresponding management plan.
SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution. However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.
STATE OF CALIFORNIA

Tribal Consultation Guidelines

SUPPLEMENT TO GENERAL PLAN GUIDELINES

April 15, 2005

GOVERNOR’S OFFICE OF PLANNING AND RESEARCH
State of California
Arnold Schwarzenegger, Governor

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April 2005

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This document is available on the Internet at http://www.opr.ca.gov/SB182004.html.
Director's Message

April 15, 2005

The Governor's Office of Planning and Research (OPR) is proud to announce the publication of the 2005 Supplement to the General Plan Guidelines. The 2005 Supplement (also known as Tribal Consultation Guidelines) provides advisory guidance to cities and counties on the process for consulting with Native American Indian tribes during the adoption or amendment of local general plans or specific plans, in accordance with the statutory requirements of Senate Bill 18 (Chapter 905, Statutes of 2004). At a future date, this 2005 Supplement will be incorporated into the General Plan Guidelines as a new chapter on tribal consultation. It is our hope that this 2005 Supplement will be useful not only to city and county planning staffs for complying with the new statutory mandates, but also to local elected officials, planning consultants, landowners, and tribal members who are involved in the general plan process.

In all of its work, OPR attempts to encourage more collaborative and comprehensive land use planning at the local, regional, and statewide levels. These goals are consistent with the goals of Senate Bill 18, which for the first time in the nation, requires cities and counties to consult with Native American tribes when adopting and amending their general plans or specific plans.

The completion of this 2005 Supplement would not have been possible without the advice and assistance of many organizations and individuals, whose support OPR acknowledges and appreciates. These organizations and individuals include the Native American Heritage Commission and its staff, the members and representatives of numerous California Native American tribes, many city and county governments, state agency representatives, professional associations and academic institutions. We appreciate their assistance in preparing this 2005 Supplement, including participation at several meetings and public workshops.

OPR met the statutory deadline of March 1, 2005, to publish these guidelines by issuing interim guidelines on March 1. In developing the interim guidelines, OPR consulted with a wide range of stakeholders and experts. We consulted with city and county representatives (planners, legislative staff and legal counsels); tribal representatives and associations; staff of the Native American Heritage Commission (NAHC), including attendance at two NAHC commission meetings; federal agencies with experience in tribal consultation; academic institutions; and professional associations that deal with archaeological and cultural resource protection. In addition, we consulted with numerous tribal liaisons within state government and sought the input of the League of California Cities and the California State Association of Counties.
Based upon this consultation, OPR issued Draft Tribal Consultation Guidelines on February 22, 2005 for public review and comment. OPR conducted a public workshop on February 25, 2005, which was well attended and resulted in a productive discussion of the process envisioned by SB 18, as well as many specific recommendations for improvements to the 2005 Supplement.

In response to requests from many parties for additional time to consult with OPR regarding the 2005 Supplement, OPR continued to reach out to stakeholders for an additional 45 days to ensure that their interests were heard. Between March 1 and April 15, OPR held four meetings throughout the State to receive additional comments. The meetings were held in Klamath, Corning, Sonora, and Temecula. This April 15 edition of the guidelines reflects the comments and concerns expressed at those four meetings, as well as written comments received by OPR.

We hope that you will find this 2005 Supplement to be an informative guide and a useful tool in the practice of local planning. I invite your suggestions on ways to improve OPR’s General Plan Guidelines and this 2005 Supplement, as OPR continues to refine and update all of its guidance to city and county planning agencies.

Sean Walsh
Director, OPR
Table of Contents

Part A: SB 18 Context and Basic Requirements ................................................................. 3
I. Introduction ...................................................................................................................... 3
II. Background Information ............................................................................................... 4
   California Native American Cultural Places ................................................................. 4
   California Native American Tribes .................................................................................. 6
III. Basic Requirements of SB 18 ...................................................................................... 7
   Responsibilities of OPR ............................................................................................... 7
   Responsibilities of Local Governments .......................................................................... 7
   Responsibilities of NAHC ............................................................................................. 8
   Other Elements of SB 18 ............................................................................................... 9
   Process Overview: General Plan or Specific Plan Adoption or Amendment .............. 10

Part B: When and How to Consult with California Native American Tribes ....................... 12
IV. Consultation: General Plan and Specific Plan Adoption or Amendment .................... 12
   What Triggers Consultation? ....................................................................................... 12
   Identifying Tribes through the NAHC ........................................................................... 13
   Contacting Tribes Pursuant to Government Code §65352.3 ........................................ 13
   After Notification is Sent to the Tribe .......................................................................... 14
   Conducting Consultation on General Plan or Specific Plan Adoption or Amendment. 15
   When is Consultation Over? ....................................................................................... 18
V. Consultation: Cultural Places Located in Open Space ................................................. 18
   What Triggers Consultation? ....................................................................................... 18
   Conducting Consultation Regarding Open Space ....................................................... 20
   When is Consultation Over? ....................................................................................... 20

Part C: Pre-Consultation ................................................................................................... 21
VI. Preparing for Consultation ......................................................................................... 21

Part D: Preservation, Mitigation, Confidentiality, and Landowner Participation ................... 23
VII. Preservation of, or Mitigation of Impacts to, Cultural Places ...................................... 23
   What are Preservation and Mitigation? .................................................................... 23
   Seeking Agreement Where Feasible ........................................................................... 24
   Monitoring and Management ..................................................................................... 25
   Private Landowner Involvement ................................................................................. 25
VIII. Confidentiality of Information .................................................................................. 25
Public Disclosure Laws ................................................................. 26
Public Hearings .................................................................................. 27
Additional Confidentiality Procedures ............................................. 27
Confidentiality Procedures for Private Landowner Involvement .... 28

IX. Procedures to Facilitate Voluntary Landowner Protection Efforts ... 29
Landowner Education and Participation ........................................... 29
Private Conservation Efforts ............................................................. 29

Part E: Open Space ........................................................................... 31

X. Open Space for the Protection of Cultural Places ...................... 31

Part F: Additional Resources ............................................................. 32

XI. Additional Resources ................................................................. 32
Part A
SB 18 Context and Basic Requirements

Sections I through III of the 2005 Supplement provide background information to familiarize local government agencies with the intent of Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) and the importance of protecting California Native American traditional tribal cultural places. Local governments will be better prepared to enter into consultations with tribes if they have a basic knowledge of tribal concerns and the value of cultural places to tribes. The key provisions of SB 18 are also outlined in table and text form.

I. Introduction

This 2005 Supplement to the 2003 General Plan Guidelines addresses the requirements of SB 18, authored by Senator John Burton and signed into law by Governor Arnold Schwarzenegger in September 2004. SB 18 requires local (city and county) governments to consult with California Native American tribes to aid in the protection of traditional tribal cultural places ("cultural places") through local land use planning. SB 18 also requires the Governor’s Office of Planning and Research (OPR) to include in the General Plan Guidelines advice to local governments for how to conduct these consultations.

The intent of SB 18 is to provide California Native American tribes an opportunity to participate in local land use decisions at an early planning stage, for the purpose of protecting, or mitigating impacts to, cultural places. The purpose of involving tribes at these early planning stages is to allow consideration of cultural places in the context of broad local land use policy, before individual site-specific, project-level land use decisions are made by a local government.

SB 18 requires local governments to consult with tribes prior to making certain planning decisions and to provide notice to tribes at certain key points in the planning process. These consultation and notice requirements apply to adoption and amendment of both general plans (defined in Government Code §65300 et seq.) and specific plans (defined in Government Code §65450 et seq.). Although SB 18 does not specifically mention consultation or notice requirements for adoption or amendment of specific plans, existing state planning law requires local governments to use the same processes for adoption and amendment of specific plans as for general plans (see Government Code §65453). Therefore, where SB 18 requires consultation and/or notice for a general plan adoption or amendment, the requirement extends also to a specific plan adoption or amendment. Although the new law took effect on January 1, 2005, several of its provisions regarding tribal consultation and notice did not take effect until March 1, 2005.

The General Plan Guidelines is an advisory document that explains California legal requirements for general plans.¹ The General Plan Guidelines closely adheres to statute and case law. It also relies upon commonly accepted principles of contemporary planning practice.

¹ California Government Code §65040.2
When the words “shall” or “must” are used, they represent a statutory or other legal requirement. “May” and “should” are used when there is no such requirement. The 2005 Supplement:

Provides background information regarding California Native American cultural places and tribes.

Outlines the basic requirements of SB 18.

Provides step-by-step guidance to local governments on how and when to consult with tribes.

Offers advice to help local governments effectively engage in consultation with tribes.

Provides information about preserving, or mitigating impacts to, cultural places.

Discusses methods to protect confidentiality of information regarding cultural places.

Presents ways of encouraging voluntary landowner involvement in the preservation of cultural places.

II. Background Information

The principal objective of SB 18 is to preserve and protect cultural places of California Native Americans. SB 18 is unique in that it requires local governments to involve California Native Americans in early stages of land use planning, extends to both public and private lands, and includes both federally recognized and non-federally recognized tribes. This section provides an overview of California Native American cultural places and California Native Americans.

California Native American Cultural Places

SB 18 refers to Public Resources Code §5097.9 and 5097.995 to define cultural places:

Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine (Public Resources Code §5097.9).

Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources pursuant to Section 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site (Public Resources Code §5097.995).

These definitions can be inclusive of a variety of places. Archaeological or historic sites may include places of tribal habitation and activity, in addition to burial grounds or cemeteries. Some examples are village sites and sites with evidence (artifacts) of economic, artistic, or other cultural activity. Religious or ceremonial sites and sacred shrines may include places associated with creation stories or other significant spiritual history, as well as modern day places of worship. Collection or gathering sites are specific places where California Native Americans access certain plants for food, medicine, clothing, ceremonial objects, basket making, and other

2 Due to a drafting error, SB 18 contains multiple references to Public Resources Code (PRC) §5097.995 which is no longer in existence. In 2004, PRC §5097.995 was amended and renumbered to PRC §5097.993 by Senate Bill 1264 (Chapter 286). Local governments should refer to PRC §5097.993 when looking for PRC §5097.995.

3 Ibid.
crafts and uses important to on-going cultural traditions and identities; these places may qualify as religious or ceremonial sites as well as sites that are listed or eligible for listing in the California Register of Historic Resources.

Native American cultural places are located throughout California because California Native American people from hundreds of different tribes made these lands their home for thousands of years. Due to the forced relocation of tribes by the Spanish, Mexicans, and Americans, most tribes do not currently control or occupy the lands on which many of their cultural places are located. As a result, California Native Americans have limited ability to maintain, protect, and access many of their cultural places.

A number of federal and state laws have been enacted to preserve cultural resources and have enabled some Native American tribes to promote the preservation and protection of their cultural places. The National Historic Preservation Act (NHPA), which established historic preservation as a national policy in 1966, includes a Section 106 review process that requires consultation to mitigate damage to “historic properties” (defined per 36 CFR 800.16(1) as places that qualify for the National Register of Historic Places), including Native American traditional cultural places (TCPs, as described in National Register Bulletin 38) whenever any agency directs a project, activity or program using any federal funds or requiring a federal permit, license or approval (36CFR.800.16). The National Environmental Policy Act (NEPA) requires every federal project to include in an Environmental Impact Statement documentation of environmental concerns, including effects on important historic, cultural, and natural aspects of our national heritage. Presidential Executive Order 13007, "Indian Sacred Sites," ensures that federal agencies are as responsive as possible to the concerns of Native American tribes regarding their cultural places. The Archaeological Resources Protection Act (ARPA) makes desecration of Native American cultural places on federal lands a felony.

California state law includes a variety of provisions that promote the protection and preservation of Native American cultural places. A number of these provisions address intentional desecration or destruction of cultural places and define certain of such acts as misdemeanors or felonies punishable by both fines and imprisonment. These include the Native American Historic Resource Protection Act (PRC §5097.995-5097.9964), Public Resources Code §5097.99, Penal Code §622.5 and Health and Safety Code §7050.5, §7052. Other provisions require consideration of potential impacts of planned projects on cultural resources, which may include Native American cultural places. Public Resources Code 5097.2 requires archaeological surveys to determine the potential impact that any major public works project on state land may have on archaeological resources. The California Environmental Quality Act (CEQA) requires project lead agencies to consider impacts, and potential mitigation of impacts, to unique archaeological and historical resources.5 California Executive Order W-26-92 affirms that all state agencies shall recognize and, to the extent possible, preserve and maintain the significant heritage resources of the State. Public Resources Code §5097.9, which mandates noninterference of free expression or exercise of Native American religion on public lands, promotes preservation of certain Native American cultural places by ensuring tribal access to these places.

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4 Ibid.
5 CEQA Statutes at Public Resources Code §21083.2-21084.1; CEQA Guidelines at 14 CCR 15064.5-15360.
While these and other laws permit Native Americans to have some say in how impacts to cultural places could be avoided or mitigated, the laws rarely result in Native American input at early stages of land use planning. Generally, these laws provide protection only to those sites located on public or Native American trust lands and address only the concerns of Native Americans who belong to federally recognized tribes, with no official responsibility to non-federally recognized tribes. The intent of SB 18 is to provide all California Native American tribes, as identified by the NAHC, an opportunity to consult with local governments for the purpose of preserving and protecting their cultural places.

**California Native American Tribes**

SB 18 uses the term, California Native American tribe, and defines this term as “a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission” (NAHC). “Federal recognition” is a legal distinction that applies to a tribe’s rights to a government-to-government relationship with the federal government and eligibility for federal programs. All California Native American tribes, whether officially recognized by the federal government or not, represent distinct and independent governmental entities with specific cultural beliefs and traditions and unique connections to areas of California that are their ancestral homelands. SB 18 recognizes that protection of traditional tribal cultural places is important to all tribes, whether federally recognized or not, and it provides all California Native American tribes with the opportunity to participate in consultation with city and county governments for this purpose. As used in this document, the term “tribe(s)” refers to a California Native American tribe(s).

California has the largest number of tribes and the largest Native American population of any state in the contiguous United States. California is home to 109 federally recognized tribes and several dozen non-federally recognized tribes. According to a 2004 California Department of Finance estimate, the Native American population in California is 383,197.

Tribal governments throughout California vary in organizational forms and size. Some tribes use the government form established under the Indian Reorganization Act of 1934 (25CFR81) with an adopted constitution and bylaws. Other tribes have adopted constitutions and bylaws that incorporate traditional values in governing tribal affairs. Many tribal governments are comprised of a decision making body of elected officials (tribal governing body) with an elected or designated tribal leader. Some tribes use lineal descent as the means of identifying the tribe’s leader. In general, tribal governing bodies and leaders serve for limited terms and are elected or designated by members of the tribe. Tribal governments control tribal assets, laws/regulations, membership, and land management decisions that affect the tribe.
III. Basic Requirements of SB 18

This section provides a brief summary of the statutory requirements of SB 18. Later sections of the Supplement provide additional detail regarding these requirements and offer advice to local governments on how to fulfill the notification and consultation requirements of SB 18. (Please refer to Section IV and Section V of these guidelines for additional information regarding the responsibilities outlined below.)

Responsibilities of OPR

Government Code §65040.2(g) requires the Governor's Office of Planning and Research (OPR) to amend the General Plan Guidelines to contain advice to local governments on the following:

- Consulting with tribes on the preservation of, or the mitigation of impacts to, cultural places.
- Procedures for identifying through the Native American Heritage Commission (NAHC) the appropriate California Native American tribes with whom to consult.
- Procedures for continuing to protect the confidentiality of information concerning the specific identity, location, character, and use of cultural places.
- Procedures to facilitate voluntary landowner participation to preserve and protect the specific identity, location, character, and use of cultural places.

Responsibilities of Local Governments

SB 18 established responsibilities for local governments to contact, provide notice to, refer plans to, and consult with tribes. The provisions of SB 18 apply only to city and county governments and not to other public agencies. The following list briefly identifies the contact and notification responsibilities of local governments, in sequential order of their occurrence.

Prior to the adoption or any amendment of a general plan or specific plan, a local government must notify the appropriate tribes (on the contact list maintained by the NAHC) of the opportunity to conduct consultations for the purpose of preserving, or mitigating impacts to, cultural places located on land within the local government's jurisdiction that is affected by the proposed plan adoption or amendment. Tribes have 90 days from the date on which they receive notification to request consultation, unless a shorter timeframe has been agreed to by the tribe (Government Code §65352.3). 6

Prior to the adoption or substantial amendment of a general plan or specific plan, a local government must refer the proposed action to those tribes that are on the NAHC contact list and have traditional lands located within the city or county's jurisdiction. The referral must allow a 45 day comment period (Government Code §65352). Notice must be sent

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6 SB 18 added this new provision to state planning law. It applies to any amendment or adoption of a general plan or specific plan, regardless of the type or nature of the amendment. Adoption or amendment of a local coastal program by a city or county constitutes a general plan amendment.
regardless of whether prior consultation has taken place. Such notice does not initiate a new consultation process.\footnote{7}

Local governments must send notice of a public hearing, at least 10 days prior to the hearing, to tribes who have filed a written request for such notice (Government Code §65092).\footnote{8}

Under SB 18, local governments must consult with tribes under two circumstances:

On or after March 1, 2005, local governments must consult with tribes that have requested consultation in accordance with Government Code §65352.3. The purpose of this consultation is to preserve, or mitigate impacts to, cultural places that may be affected by a general plan or specific plan amendment or adoption.

On or after March 1, 2005, local governments must consult with tribes before designating open space, if the affected land contains a cultural place and if the affected tribe has requested public notice under Government Code §65092. The purpose of this consultation is to protect the identity of the cultural place and to develop treatment with appropriate dignity of the cultural place in any corresponding management plan (Government Code §65562.5).

Responsibilities of NAHC

The NAHC is charged with the responsibility to maintain a list of California Native American tribes with whom local governments must consult or provide notices (as required in Government Code §65352.3, §65352, and §65092). The criteria for defining "tribe" for the purpose of inclusion on this list are the responsibility of the NAHC. The list of tribes, for the purposes of notice and consultation, is distinct from the Most Likely Descendent (MLD) list that the NAHC maintains.

Upon request, the NAHC will provide local governments with a written contact list of tribes with traditional lands or cultural places located within a city’s or county’s jurisdiction. These are the tribes that a local government must contact, for purposes of consultation, prior to adoption or amendment of a general plan or specific plan. The NAHC will identify the tribes that must be contacted, based on NAHC’s understanding of where traditional lands are located within the State.

For more information on the NAHC’s roles and responsibilities, contact the NAHC. (See also Part F: Additional Resources)

\footnote{7}{Government Code §65352 was amended by SB 18 to include tribes among the entities to whom the proposed action must be referred. The term "substantial amendment" has been in the statute for many years and was not modified by SB 18.}

\footnote{8}{Government Code §65092 was modified by SB 18 to include certain tribes as "persons" that are eligible to request and receive notices of public hearing. "Person" now includes a California Native American tribe that is on the contact list maintained by the NAHC.}
**Other Elements of SB 18**

In addition to the notice and consultation requirements outlined above, SB 18 amended Government Code §65560 to allow the protection of cultural places in the open space element of the general plan. *(See Section X.)* Open space is land designated in the city or county open space element of the general plan for one or more of a variety of potential purposes, including protection of cultural places.

SB 18 also amended Civil Code §815.3 and adds California Native American tribes to the list of entities that can acquire and hold conservation easements. Tribes on the contact list maintained by the NAHC now have the ability to acquire, on terms mutually satisfactory to the tribe and the landowner, conservation easements for the purpose of protecting their cultural places. *(See Section IX.)*
Process Overview: General Plan or Specific Plan Adoption or Amendment

As discussed above, SB 18 establishes responsibilities for local government to contact, refer plans to, and consult with tribes. The following table provides an overview of SB 18 requirements related to the adoption or amendment of a general plan or specific plan. All statutory references are to the Government Code (GC).

**Overview of SB 18 Consultation and Notice Requirements**

<table>
<thead>
<tr>
<th>Step</th>
<th>OPR Guidelines (GDL)-Section and Statutory Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoption or amendment of any general plan (GP) or specific plan (SP) is proposed on or after March 1, 2005.</td>
<td>GDL Section IV GC §65352.3(a)(1)</td>
</tr>
<tr>
<td>Local government sends proposal information to NAHC and requests contact information for tribes with traditional lands or places located within the geographical areas affected by the proposed changes.</td>
<td>GDL Section IV GC §65352.3(a)(2)</td>
</tr>
<tr>
<td>NAHC provides tribal contact information. OPR recommends that NAHC provide written information as soon as possible but no later than 30 days after receiving a local government’s request</td>
<td>GDL Section IV</td>
</tr>
<tr>
<td>Local government contacts tribe(s) identified by NAHC and notifies them of the opportunity to consult. Pursuant to Government Code §65352.3, local government must consult with tribes on the NAHC contact list.</td>
<td>GDL Section IV</td>
</tr>
<tr>
<td>Tribe(s) responds to a local government notice within 90 days, indicating whether or not they want to consult with the local government. Consultation does not begin until/unless a tribe requests it within 90 days of receiving a notice of the opportunity to consult. Tribes can agree to a shorter timeframe (less than 90 days) to request consultation.</td>
<td>GDL Section IV GC §65352.3(a)(2)</td>
</tr>
<tr>
<td><strong>Step</strong></td>
<td><strong>OPR Guidelines (GDL) Section and Statutory Reference</strong></td>
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</tr>
<tr>
<td>Consultation begins, if requested by tribe. No statutory limit on the duration of the consultation. Consultation may continue through planning commission or board of supervisors/city council deliberation on plan proposal.</td>
<td>GDL Section IV</td>
</tr>
<tr>
<td>Local government continues normal processing of GP/SP adoption or amendment. (CEQA review, preparation of staff reports, consultation, etc., may be ongoing.)</td>
<td></td>
</tr>
<tr>
<td>At least 45 days before local government adopts or substantially amends GP/SP, local government refers proposed action to agencies, including tribe(s). Referral required regardless of whether or not there has been prior consultation. This does not initiate a new consultation process. This opens 45 day comment period before approval by board of supervisors/city council. Referral required on or after March 1, 2005.</td>
<td>GDL Section III GC §65352(a)(8)</td>
</tr>
<tr>
<td>At least 10 days before public hearing, local government provides notice of hearing to tribes and any other persons who have requested such notice.</td>
<td>GDL Section III GC §65092</td>
</tr>
<tr>
<td>Public hearing of board of supervisors/city council to take final action on the GP/SP.</td>
<td></td>
</tr>
</tbody>
</table>

*Note: The Permit Streamlining Act (PSA) (GC §65920 et seq.) establishes time limits for public agencies to take action on privately initiated development projects. Some general plan amendments may involve a private applicant for a development project. The PSA does not apply to a project that requires approval by a legislative act, such as a general plan amendment or rezone, even if there is a quasi-judicial approval involved (such as a use permit or subdivision map). Therefore, time limits for project approval under the PSA should not interfere with a local government’s process for consultation.*

03/01/05
Part B
When and How to Consult with California Native American Tribes

Sections IV and V of the 2005 Supplement provide step-by-step guidance to local government agencies on how and when to consult with tribes, including when to provide certain types of notices during the planning process. It is very important to review the information in Part C (Pre-Consultation) before undertaking consultation on a general plan or specific plan proposal.

IV. Consultation: General Plan and Specific Plan Adoption or Amendment

Each time a local government considers a proposal to adopt or amend the general plan or specific plan, they are required to contact the appropriate tribes identified by the NAHC. If requested by tribes, local governments must consult for the purpose of preserving or mitigating impacts to cultural places. The following section provides basic guidance to local governments on the notification and consultation requirements in Government Code §65352.3.

What Triggers Consultation?

Government Code §65352.3 requires local governments to consult with tribes prior to the adoption or amendment of a general plan or specific plan proposed on or after March 1, 2005. Local governments should consider the following when determining whether a general plan or specific plan adoption or amendment is subject to notice and consultation requirements:

In the case of an applicant-initiated plan proposal, if the local government accepts a complete application (as defined in Government Code §65943) on or after March 1, 2005, the proposal is subject to Government Code §65352.3.

In the case of a general plan or specific plan amendment initiated by the local government, any proposal introduced for study in a public forum on or after March 1, 2005 is subject to Government Code §65352.3. A legislative body must take certain actions to initiate, or propose, a general plan or general plan amendment. These actions must be taken in a duly noticed public meeting, and may include, but are not limited to, any of the following: appropriation of funds, adoption of a work program, engaging the services of a consultant, or directing the planning staff to begin research on the activity.

Under Government Code §65352.3, only if a tribe is identified by the NAHC, and that tribe requests consultation after being contacted by a local government, must a local government consult with the tribe on the plan proposal.

Local governments are encouraged to consult with tribes as early as possible and may, if appropriate, begin consultation even before a formal proposal is submitted by an applicant or initiated by the local government.
Identifying Tribes through the NAHC

Once a local government or private applicant initiates a proposal to adopt or amend a general plan or specific plan, the local government must send a written request to the NAHC asking for a list of tribes with whom to consult. OPR recommends that the written request be sent to the NAHC as soon as possible. Local governments should consider the following points when submitting a request to the NAHC:

All written requests should be sent to the NAHC via certified mail or by fax.

Requests to the NAHC should include the specific location of the area that is subject to the proposed action, preferably with a map clearly showing the area of land involved.

Requests should clearly state that the local government is seeking information about tribes that are on the “SB 18 Consultation List.”

Contact information for the NAHC:

Native American Heritage Commission
915 Capitol Mall, Room 364
Sacramento, CA 95814
Phone: 916-653-4082
Fax: 916-657-5390
http://www.nahc.ca.gov

A sample form for submitting a request to the NAHC is provided in Exhibit A. The tribal consultation list request form is also available on the NAHC website.

The NAHC will provide local governments with a written contact list of tribes with traditional lands or cultural places located within the local government’s jurisdiction. For each listed tribe, the NAHC will provide the tribal representative’s name, name of tribe, address, and phone number (if available, fax and email address). Although there is no statutory deadline for NAHC to respond to the local government, OPR recommends that the NAHC provide written contact information as soon as possible but no later than 30 days after receiving a written request from the local government.

Contacting Tribes Pursuant to Government Code §65352.3

Once a tribal contact list is received from the NAHC, local governments must contact the appropriate tribe(s) and invite them to participate in consultation. OPR suggests that local governments contact tribes as soon as possible upon receiving the tribal contact list. While the statute does not specify by what means tribe(s) should be contacted, OPR suggests that local governments send a written notice by certified mail with return receipt requested. Sending a written notice does not preclude a local government from also contacting the tribe by telephone, FAX, or e-mail.

Notices should be concise, clear, and informative so that tribes understand what they are receiving. Try to avoid using a standard public notice format to invite a tribe to consult, as most public notices do not contain sufficient information about the proposed action to enable a tribe to
respond. Keep in mind that the purpose of this notice is to invite a tribe to request consultation. Notices sent from a local government to a tribe, inquiring whether consultation is desired, should contain the following information:

A clear statement of purpose, inviting the tribe to consult and declaring the importance of the tribe’s participation in the local planning process.

A description of the proposed general plan or specific plan being considered, the reason for the proposal, and the specific geographic area(s) that will be affected by the proposal. Relevant technical documents should be provided with a concise explanation that clearly describes the proposed general plan or specific plan amendment and its potential impacts on cultural resources, if known.

Maps that clearly detail the geographic areas described in the explanation. Maps should be in a reasonable scale with sufficient references for easy identification of the affected areas.

The deadline (date) by which the tribe must request a consultation with the local government. By law, tribes have 90 days from the date of receipt of the notice to request consultation (Government Code §65352.3(a)(2)).

Contact information for representatives of the local government to whom the tribe should respond.

Contact information for the project proponent/applicant and landowner(s), if applicable.

Technical reports, including summaries of cultural resource reports and archaeological reports applicable to that tribe’s cultural place(s), if available.

Information on proposed grading or other ground-disturbing activities, if applicable. (This may be included in the project description.)

Subject to confidentiality procedures, both parties should maintain clear records of communications, including letters, telephone calls, and faxes. Both parties may send notices by certified mail and keep logs of telephone calls and faxes. Any returned or unanswered correspondence should be retained in order to verify efforts to communicate. Documentation of notification and consultation requests should be included in the local government’s public record.

In addition to the above recommendations, local governments may, in cooperation with tribes, develop notification procedures as a part of consultation protocols established in cooperation with a tribal government. Local governments should be aware that some tribes already have consultation protocols. In addition, local governments may adopt policies regarding consultation with a tribal government. (See Section VI.)

After Notification is Sent to the Tribe

Once local governments have sent notification, tribes are responsible for requesting consultation. Pursuant to Government Code §65352.3(a)(2), each tribe has 90 days from the date on which they receive notification to respond and request consultation. Some key points to consider include:
The time period for consultation (undefined) is independent of the time period for tribes to request consultation (90 days).

Local governments should be aware that tribes may require the entire 90-day period allowed by law to respond to a consultation request. Tribal governing bodies may need to meet to take a formal position on consultation.

Local governments and tribal governments may consider addressing the method and timing of a tribe’s response to a consultation request in a jointly-developed consultation protocol. (See Section VI.)

At their discretion, tribes can agree to a shorter timeframe (less than 90 days) to respond and request consultation.

After the information about a proposed plan or plan amendment is received by the tribe, local governments should cooperate to provide any additional pertinent information about the proposed plan or plan amendment that the tribe may request. Local governments may consider extending the 90 day timeframe for the tribe to review the new information and respond accordingly.

If the tribe does not respond within 90 days or declines consultation, consultation is not required under Government Code §65352.3.

**Conducting Consultation on General Plan or Specific Plan Adoption or Amendment**

Once a tribe requests consultation, consultation for the purpose of preserving or mitigating impacts to cultural places should begin within a reasonable time. Consultation should focus on how the proposed general plan or specific plan amendment or adoption might impact cultural places located on land affected by the plan proposal. The objectives of consultation, according to the legislative intent of SB 18, include:

- Recognizing that cultural places are essential elements in tribal culture, traditions, heritages and identities.
- Establishing meaningful dialogue between local and tribal governments in order to identify cultural places and consider cultural places in local land use planning.
- Avoiding potential conflicts over the preservation of Native American cultural places by ensuring local and tribal governments have information available early in the land use planning process.
- Encouraging the preservation and protection of Native American cultural places in the land use process by placing them in open space.
- Developing proper treatment and management plans in order to preserve cultural places.
- Enabling tribes to manage and act as caretakers of their cultural places.

Consultation is a process in which both the tribe and local government invest time and effort into seeking a mutually agreeable resolution for the purpose of preserving or mitigating impacts to a cultural place, where feasible. Government Code §65352.4 provides a definition of consultation for use by local governments and tribes:
Consultation means the meaningful and timely process of seeking, discussing, and considering carefully the views of others, in a manner that is cognizant of all parties' cultural values and, where feasible, seeking agreement. Consultation between government agencies and Native American tribes shall be conducted in a way that is mutually respectful of each party's sovereignty. Consultation shall also recognize the tribes' potential needs for confidentiality with respect to places that have traditional tribal cultural significance.

Effective consultation is an ongoing process, not a single event. The process should focus on identifying issues of concern to tribes pertinent to the cultural place(s) at issue—including cultural values, religious beliefs, traditional practices, and laws protecting California Native American cultural sites—and on defining the full range of acceptable ways in which a local government can accommodate tribal concerns.

Items to Consider When Conducting Consultation

The following list identifies recommendations for how local governments and tribes may approach consultation on general plan and specific plan proposals.

As defined in Government Code §65352.4, consultation is to be conducted between two parties: the local government and the tribe. Both parties to the consultation are required to carefully consider the views of the other.

Consultation does not necessarily predetermine the outcome of the plan or amendment. In some instances, local governments may be unable to reach agreement due to other state laws or competing public policy objectives.

Local governments must consult with each tribe who is identified by the NAHC and requests consultation. The NAHC will identify whether there are, in fact, any tribes with whom the local government must consult. One or more tribes may have traditional cultural ties to land within the local government's jurisdiction and have an interest in preserving cultural places on those lands. Therefore, local governments may have to consult with more than one tribe on any particular plan proposal.

OPR recommends that local governments consult with tribes one at a time (individually). If multiple tribes are involved and willing to jointly consult, local governments may consult with more than one tribe at a time.

When a local government first contacts a tribe, its initial inquiry should be made to the tribal representative identified by the NAHC. OPR recommends that a local government department head or other official of similar or higher rank make the initial contact.

Government leaders of the two consulting parties may consider delegating consultation responsibilities (such as attending meetings, sharing information, and negotiating the needs and concerns of both parties) to staff. Designated representatives should maintain direct relationships with and have ready access to their respective government leaders. These individuals may, but are not required to, be identified in a jointly-developed consultation protocol. (See Section VI.) In addition, the services of other professionals (attorneys,
contractors, or consultants) may be utilized to develop legal, factual, or technical information necessary to facilitate consultation.

Simply notifying a tribe of a plan proposal is not the same as consultation.⁹

Local governments should be aware of the potential for vast differences in tribal governments' level of staffing and other resources necessary to participate in the manner required by Government Code §65352.3 and §65352.4. Some may be able to respond more promptly and efficiently than others. Local governments should keep this in mind if and when developing a consultation protocol with a tribe. (See Section VI.)

As a part of consultation, local governments may conduct record searches through the NAHC and California Historic Resources Information System (CHRIS) to determine if any cultural places are located within the area(s) affected by the proposed action. Local governments should be aware, however, that records maintained by the NAHC and CHRIS are not exhaustive, and a negative response to these searches does not preclude the existence of a cultural place. A tribe may be the only source of information regarding the existence of a cultural place.

Local governments should be aware that the confidentiality of cultural places is critical to tribal culture and that many tribes may seek confidentiality assurances prior to divulging information about those sites. (See Section VIII.)

Tribal consultation should be done face-to-face. If acceptable to both parties, local and tribal governments may wish to define circumstances under which parts of the consultation process can be carried out via conference calls, e-mails, or letters. (See Section VIII.)

Tribal consultations should be conducted in a setting that promotes confidential treatment of any sensitive information that is shared about cultural places. Consultation should not take place in public meetings or public hearings.

The time and location of consultation meetings should be flexible to accommodate the needs of both the local government and tribe. Local governments should recognize that travel required for in-person consultation may be time-consuming, due to the rural location of a tribe. Local governments should also take into account time zone changes when setting meeting times. Local governments should offer a meeting location at the city hall, county administrative building, or other appropriate location. Local governments should also be open to a tribe's invitation to meet at tribal facilities.

The local government and tribe can agree to mutually invite private landowners to participate in consultation, if both parties feel that landowner involvement would be appropriate.

Local governments are encouraged to establish a collaborative relationship with tribes as early as possible, prior to the need to consult on a particular general plan or specific plan

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⁹ In Pueblo of Sandia v. United States, 50 F.3d 856 (10th Cir. 1995), the court held that the U.S. Forest Service had not fulfilled its consultation responsibilities under the National Historic Preservation Act by merely sending letters to request information from tribes. The court ruling held that written correspondence requesting consultation with a tribe was not sufficient for the purpose of conducting consultation as required by law, and that telephone calls or more direct forms of contact may be required.
amendment or adoption. Local governments may consider conducting pre-consultation meetings and developing consultation protocols in cooperation with tribes. *(See Section VI.)*

Both parties should attempt to document the progress of consultation, including letters, telephone calls, and direct meetings, without disclosing sensitive information about a cultural place. Local governments may also want to document how the local government representative(s) fulfilled their obligations under Government Code §65352.3 and §65352.4.

**When is Consultation Over?**

Alan Downer, of the Advisory Council on Historic Preservation, described consultation as "conferring between two or more parties to identify issues and make a good faith attempt to find a mutually acceptable resolution of any differences identified." Differences of opinion and of priorities will arise in consultation between local and tribal governments. Whenever feasible, both local and tribal governments should strive to find mutually acceptable resolutions to differences identified through consultation.

When engaging in consultation, local government and tribal representatives should consider leaving the process open-ended to allow every opportunity for mutual agreement to be reached. Some consultations may involve highly sensitive and complex issues that cannot be resolved in just one discussion. Consultation may require a series of meetings before a mutually acceptable agreement may be achieved. Consultation must be concluded prior to the formal adoption or amendment of a general plan or specific plan.

Consultation, pursuant to Government Code §65352.3 and §65352.4, should be considered concluded at the point in which:

- the parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
- either the local government or tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning appropriate measures of preservation or mitigation.

**V. Consultation: Cultural Places Located in Open Space**

On and after March 1, 2005, if land designated, or proposed to be designated as open space contains a cultural place, and if an affected tribe has requested notice of public hearing under Government Code §65092, then local governments must consult with the tribe. The purpose of this consultation is to determine the level of confidentiality required to protect the specific identity, location, or use of the cultural place, and to develop treatment with appropriate dignity of the cultural place in any corresponding management plan (Government Code §65562.5). This consultation provision does not apply to lands that were designated as open space before March 1, 2005.

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10 From "The Navajo Nation Model: Tribal Consultation Under the National Historic Preservation Act" (2000).
What Triggers Consultation?

Government Code §65562.5 applies to land that is designated, or proposed to be designated, as open space, on or after March 1, 2005. Local governments must consider several criteria when determining whether consultation is required, prior to designating open space on or after March 1, 2005.

Local governments must first learn whether the land designated, or proposed to be designated, as open space contains a cultural place. The following are methods by which local governments may be informed if a cultural place is located on designated or proposed open space:

- Conduct a record search through the NARC to learn whether any listed cultural places are located on land proposed to be designated as open space. The local government should provide maps of lands proposed as open space to the NARC with a request to identify whether there are any cultural places on the property. Because the NARC’s sacred lands file is confidential, the commission will only divulge the presence or absence of a listed site and will direct the local government to the appropriate tribe(s) for more information.

- Conduct a record search through CHRIS to learn whether any listed cultural places are located on land proposed to be designated as open space. Local governments should enter into agreements with CHRIS information centers to establish procedures and protocols for requesting searches of historical resource records.

- Request that tribes identify the existence of any cultural places on the proposed open space land. Local governments should send a written request to the NAHC asking for a written list of tribes that have traditional cultural ties to the proposed open space. The NAHC will provide tribal contact information. Local governments should contact each tribe on the list provided by the NAHC to learn whether any cultural places are located on the land proposed as open space. Local government should provide the tribe with a sufficiently detailed map of the open space together with a concise notice as to why the tribe is being contacted. (Note: This contact is strictly for the purpose of identifying whether a cultural place is or may be located on the proposed open space land. It does not start consultation with a tribe.)

Local governments should be aware that records maintained by the NAHC and CHRIS are not exhaustive, and a negative response to searches does not preclude the existence of a cultural place. In most instances, and especially because of associated confidentiality issues, it is likely that tribes will be the only source of information regarding certain cultural places.

After a local government learns that a cultural place is or may be located on land designated or proposed to be designated as open space, the local government must notify the appropriate tribes of the opportunity to participate in consultation. The appropriate tribes are those which have: (1) been identified by the NAHC, and (2) requested notice of public hearing from the local government pursuant to Government Code §65092.
Conducting Consultation Regarding Open Space.
The purpose of this consultation is to determine the level of confidentiality required to protect the specific identity, location, character, or use of the cultural place and to develop treatment with appropriate dignity of the cultural place in any corresponding open space management plan. The reference to “any corresponding management plan” is not meant to imply that there is such a plan or that the local government must develop such a management plan. This language is intended to encourage consideration of management policies and practices which may be discussed between the local government and tribe and incorporated into a new or existing management plan for the cultural place.

The following are examples of appropriate items to consider and discuss during consultation:

- Encourage tribal involvement in the treatment and management of the cultural place through contracting, monitoring, co-management, and other forms of joint local-tribal participation.
- Tribes may only wish to disclose a sufficient amount of information to protect the site and to allow for the proper treatment and management of the cultural place. (See Section VIII.)
- Tribes may wish to have access to cultural places located on open space for gathering, performing ceremonies and/or helping maintain the site.
- Tribes may want to recommend management practices that avoid disturbing or impacting the cultural place.
- Tribes may wish to discourage certain land uses (e.g. recreation) within the open space that could adversely impact the cultural place. Local governments may be asked to consider appropriate land uses in the open space designation that would avoid direct impacts to the cultural place.

The designation of open space, as provided in Government Code §65562.5, may but does not always, involve amending the general plan. In some jurisdictions, designation of open space may occur through rezoning of land from one zone designation to an open space zone designation, without the need for a general plan amendment. However, for proposals to designate open space that require a general plan or specific amendment, the local government should consider the above recommendations as well as the recommendations outlined in Section IV of these guidelines.

When is Consultation Over?
Please refer to Section IV for additional information regarding the meaning of consultation.
Part C
Pre-Consultation

Section VI provides advice to local governments that is intended to help them more effectively engage in consultation with tribes. This part of the 2005 Supplement provides information that may help local governments establish working relationships with tribes prior to entering into the required consultation pursuant to Government Code §65352.3 and §65562.5.

VI. Preparing for Consultation

As discussed above, Government Code §65352.3 requires consultation during the process of amending or adopting general plans or specific plans. In addition, Government Code §65562.5 requires consultation to determine the proper level of confidentiality to protect and treat a cultural place with appropriate dignity, where such places are located on lands to be designated as open space. Before engaging in consultation in either of these cases, local governments may want to consider developing relationships with tribes that have traditional lands within their jurisdiction. Although not required by law, these pre-consultation efforts may develop a foundation for a mutually respectful and cooperative relationship that helps to ensure more smooth and effective communication in future consultations.

Local governments may wish to consider the following when undertaking pre-consultation meetings:

   Contact the NAHC to obtain a list of all appropriate tribes with whom to pre-consult. Because this list may be revised over time by the NAHC, local governments should periodically request updated contact lists.

   Contact the NAHC and CHRIS to learn if any historical or cultural places are located within the city’s or county’s jurisdiction. (Note that the NAHC and CHRIS have different procedures for searching information about cultural sites. See Part F for more information about each organization and how to contact them. As previously noted, NAHC and CHRIS records pertaining to cultural places are not exhaustive, and a negative response to these searches does not preclude the existence of a cultural place.)

   Invite each tribal government’s leaders to meet with local government leaders for the purpose of establishing working relationships and exchanging information about respective governmental structures, practices, and processes. Pre-consultation meetings may include discussion about community goals, planning priorities, and how cultural places play a role in the tribal culture.

   Hold informational workshops or meetings with the tribe(s) to discuss the general plan process, the existing general plan, and any contemplated amendments. Local governments should not expect or ask a tribe to share confidential information in a meeting with other tribes or the general public.

   Ask tribes whether they have existing consultation protocols.
Develop a consultation protocol that addresses how a cooperative relationship can be maintained and how future consultations should be conducted. Some tribes may already have established protocols through working with other agencies, such as state and federal entities, that can be used as models.

If a tribe and local government decide to develop a consultation protocol, both parties should suggest topics that they believe will facilitate consultation. The following are examples of items that may be appropriate to discuss and include in a jointly-developed consultation protocol:

- Representative(s) from each consulting party who will be designated to participate in consultations and manage the information resulting from the consultations.
- Key points in the consultation process when elected government leaders may need to be directly involved in consultation.
- Method(s) of contact preferred by the tribal government and additional tribal representatives that the local government should contact regarding a proposed action.
- Procedures for giving and receiving notice, including method and timing.
- Preferred method(s) of consultation. While in-person consultation is recommended, it may be acceptable to both parties that certain aspects of consultation occur through conference calls, e-mails, or letters.
- Preferred locations of consultation meetings.
- The tribe’s willingness to participate in joint consultation, should a specific site be of interest to more than one tribe.
- Procedures to allow tribal access to the local government’s consultation records.
- Procedures for maintaining accurate, up-to-date contact information.

Over time, the initial approach to consultation may need to be updated. Both parties should be open to identifying and agreeing on changes to their consultation protocol.
Part D
Preservation, Mitigation, Confidentiality, and Landowner Participation

Sections VII through IX provide advice to local governments for considering issues such as appropriate means to preserve, or mitigate impacts to, cultural places; methods to protect the confidentiality of cultural places; and ways to encourage the participation of landowners in voluntary preservation efforts.

VII. Preservation of, or Mitigation of Impacts to, Cultural Places

Government Code §65352.3 requires local governments to conduct consultations with tribes (when requested) for the purpose of "preserving or mitigating impacts" to California Native American cultural places. In the course of adopting or amending a general plan or specific plan, local governments may be informed of the existence of a cultural place within the affected area. Should a tribe request consultation to discuss any impacts to the cultural place, local governments should consider a variety of factors when participating in the consultations, including: the history and importance of the cultural place, the adverse impact the local government action may have on the cultural place, options for preserving the cultural place, and options for mitigating impacts of the proposal to the cultural place.

When participating in consultations, it is important that local governments consider that, because of philosophical differences, mitigation will not always be viewed as an appropriate option to protect cultural, and often irreplaceable, places. Many tribes may determine that impacts to a cultural place cannot be mitigated; that the only appropriate treatment may be to preserve the cultural place without impact to its physical or spiritual integrity. Of course, this is not to say that tribes will not engage in discussions regarding mitigation of impacts to their cultural places, but local governments should consider the vastly different perspectives that tribes may have. What a local government may consider to be acceptable treatment under current environmental, land use, and cultural resource protection laws, may not be considered by a tribe to be acceptable treatment for a sacred or religious place.

The following is a discussion of preservation and mitigation, as mentioned in Government Code §65352.3. Local governments should check with their legal counsels to identify any other legal obligations to preserve or mitigate impacts to Native American cultural resources.

What are Preservation and Mitigation?

Preservation is the conscious act of avoiding or protecting a cultural place from adverse impacts including loss or harm. Mitigation, on the other hand, is the act of moderating the adverse impacts that general plan or specific plan adoption or amendment may have on a cultural place.
While local governments should strive to help preserve the integrity of, access to, and use of cultural places\(^{11}\), mitigation may often be achieved through a broad range of measures:

Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

Rectifying the impact by repairing, rehabilitating, or restoring the impacted cultural place.

Reducing or eliminating the impact over time through monitoring and management of the cultural place.

Other methods of mitigation may include:

- Designation of open space land in accordance with Government Code §65560(b).
- Enhancement of habitat or open space properties for protection of cultural place.
- Development of an alternate site suitable for tribal purposes and acceptable to the tribe.
- Other alternative means of preserving California Native American cultural features, where feasible.

It is important that local governments consider that mitigation measures may largely differ depending on customs of a particular tribe, the characteristics and uses of a site or object, the cultural place’s location, and the importance of the site to the tribe’s cultural heritage. Where a cultural place is affected by a proposed general or specific plan adoption or amendment, consultations with tribes should focus on preserving, or mitigating the impacts to, that specific cultural place.

**Seeking Agreement Where Feasible**

Although Government Code §65352.3(a) requires consultation for the purpose of preserving or mitigating against the adverse impacts that a general plan or specific plan adoption or amendment may have on a cultural place, there is no requirement to preserve a cultural place or adopt mitigation measures, if agreement cannot be reached. Under the definition of “consultation” within Government Code §65352.4, local governments and tribes are required to carefully consider each other’s views and are required to seek an agreement, “where feasible.” For the purposes of Government Code §65352.4, agreements should be considered “feasible” when capable of being accomplished in a successful manner within a reasonable time taking into account economic, environmental, social and technological factors.\(^{12}\) If, after conducting consultations in good faith and within the spirit of the definition, the tribe or local government cannot reach agreement on preservation or mitigation of any impact to a California Native American cultural place, neither party is required to take any action under Government Code §65352.3(a).

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\(^{11}\) Cultural Places referring to places, features, and objects under Government Code §65352.3(a) and described in Government Code §§5097.9 and 5097.995.

\(^{12}\) See State of California General Plan Guidelines, Governor’s Office of Planning & Research, Glossary, page 261.
Monitoring and Management

During consultations, local governments should consider the involvement of tribes in the ongoing treatment and management of cultural places, objects, or cultural features through a specific monitoring program, co-management, or other forms of participation.

Where a cemetery, burial ground, or village site may be present, the planning of treatment and management activities should address the possibility that California Native American human remains may be involved when protecting cultural features. Local governments should consider working with tribes to develop an appropriate plan for the identification and treatment of such discoveries in accordance with Public Resources Code §5097.98.

Private Landowner Involvement

During consideration of a proposed general plan adoption or amendment, a local government may discover or be informed of a cultural place that exists on privately owned land within an affected area. In such an instance, local governments should first contact the appropriate tribe or tribes to offer consultations and determine an acceptable level of landowner involvement. Local governments should be aware that there may be some occasions where a tribe may prefer to maintain strict confidentiality without the inclusion of a private, third party landowner.

If a tribe is interested in involving the landowner in preservation or mitigation activities, the local government should consider facilitating such involvement. It is important that local governments and tribes understand that there is no statutory requirement to include private landowners under the government-to-government consultations requirements of Government Code §65352.3(a). However, because landowner participation is encouraged, local governments may consider suggesting the following methods to facilitate landowner involvement:

- Suggesting that the tribe contact the private landowner directly to facilitate discussions between the tribe and landowner.
- Offering to contact the private landowner directly on behalf of the tribe.
- Suggesting that the private landowner be included as a party to the consultations.

VIII. Confidentiality of Information

Protecting the confidentiality of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places is one of the most important objectives of SB 18. This is clearly evidenced by SB 18’s legislative intent as well as its statutory additions and amendments which address the issue of confidentiality and requires “each city and county to protect the confidentiality of information concerning” cultural places.\(^{13}\) By maintaining the confidentiality of a cultural place, including its location, traditional uses, and characteristics, local governments can help assure tribes of continued access and use of these cultural places, in addition to aiding in the preservation of a cultural place’s integrity. However, local governments should take into consideration other state and federal laws which may impose conflicting public policy priorities or requirements.

\(^{13}\) See SB 18 §1(b)(3), (Burton, Ch. 905, Stat. 2004); Govt. Code §§ 65040.2(g)(3), 65352.3, 65352.4, and 65562.5.
Public Disclosure Laws

The California Public Records Act (Government Code §6250 et. seq.) and California's open meeting laws applying to local governments (The Brown Act, Government Code §54950 et. seq.) both have implications with regard to maintaining confidentiality of California Native American cultural place information. Local governments are encouraged to carefully consider these laws in greater detail, and adopt or incorporate these recommendations into their own confidentiality procedures in order to avoid the unintended disclosure of confidential cultural place information.

The California Public Records Act (CPRA)

Subject to specified exemptions, the CPRA provides that all written records maintained by local or state government are public documents and are to be made available to the public, upon request. Written records include all forms of recorded information (including electronic) that currently exist or that may exist in the future. The CPRA requires government agencies to make records promptly available to any citizen who asks, unless an exemption applies.

While the CPRA does exempt certain types of information from public disclosure, the law is presently unclear as to whether a public agency would be required to disclose records (written and in a local government's possession) pertaining to cultural places under a CPRA request. However, federal and state laws do impose significant restrictions on the maintenance, use, and disclosure of records and information pertaining to tribal cultural places. Mindful of these restrictions, and the state's guarantee that access to information concerning the conduct of the people's business is a fundamental right of every person in California, and that any exceptions to disclosure are narrowly construed, public records concerning the nature and specific location of a tribal cultural place should be disclosed by a local agency in response to a request under Government Code §6250 unless the local agency makes a written determination that:

1. disclosure of the information would create an unreasonable risk of harm, theft, or destruction of the resource or object, including individual organic or inorganic specimens; or
2. disclosure is inconsistent with other applicable laws protecting the resource or object; or
3. in accordance with Government Code §6255 on the facts of a particular case the public interest served by not making the record public clearly outweighs the public interest served by disclosure of the record.

The Brown Act

The Brown Act governs the legislative bodies of all local agencies within California. It requires that meetings held by these bodies be “open and public.” Under this Act, no local legislative body may take an action in secret, nor will the body’s action be upheld if it is in violation of California’s open meeting laws. The Brown Act defines a “meeting” as a gathering of a majority of the members of a applicable body to hear, discuss, or deliberate on matters within the agency’s or board’s jurisdiction.

See California Constitution, Article I, Section 3, Subdivision (b)(2); and County of Los Angeles v. Superior Court (Axelrad), 82 Cal.App.4th 819 (2000).
While the Brown Act does contain some exceptions for "closed meetings," none of these exceptions would allow the quorum of a local legislative body to participate in tribal consultations within a closed meeting. Should a local legislative body participate in confidential tribal consultations, it is important that they do so as an advisory committee with less than a quorum, so as not to invoke the Brown Act's requirements of public participation (see Government Code §54952(b)). Otherwise, the Brown Act will require that the consultations be held in public, thereby defeating the purpose of confidentiality, or, alternatively, any decisions made by the quorum of the body within a closed meeting would be rendered invalid.

In order to efficiently conduct tribal consultation meetings, in addition to maintaining confidentiality at all times, local governments are encouraged to develop procedures in advance that would designate a committee or agency in charge. In doing so, local governments should consider the problems associated with elected official participation within tribal consultations, and should tailor their procedures accordingly.

**Public Hearings**

General plan amendments, specific plan amendments, and the adoption of a general or specific plan each require both a planning commission and a city council or board of supervisors to conduct public hearings. The decision to approve or deny these proposals must be based in reason and upon evidence in the record of the public hearing. When addressing an adoption or amendment involving a cultural place, elected officials will need to be apprised of the cultural site implications in order to make informed decision. However, to maintain the confidentiality of this cultural place information, local governments and tribes, during consultations, should agree on what non-specific information may be disclosed during the course of a public hearing. Additionally, local governments should avoid including any specific cultural place information within CEQA documents (such as Environmental Impact Reports, Negative Declaration, and Mitigated Negative Declarations) or staff reports which are required to be available at a public hearing.

**Additional Confidentiality Procedures**

Additionally, local governments should consider the following items when considering steps to be taken in order to maintain confidentiality:

- Local governments should develop "in-house" confidentiality procedures.
- Procedures should be established to allow for tribes to share information with local government officials in a confidential setting.
- Only those tribal designees, planning officials, qualified professional archaeologists, and landowners involved in the particular planning activity should obtain information about a specific site.
- Participating landowners should be asked to sign a non-disclosure agreement with the appropriate tribe prior to gaining access to any specific site information.
- Local governments should not include detailed (confidential) information about cultural places in any of its public documents.
Possible procedures to require local government to notify participating tribes and landowners whenever records containing specific site information have been requested for public disclosure.

Local governments should also keep in mind that the terms for confidentiality may differ depending upon the nature of the site, the tribe, the local government, the landowner, or who proposes to protect the site. Local governments should collaborate with tribes to develop informational materials to educate landowners regarding the cultural sensitivity of divulging site information, explaining the tribe’s interest in maintaining the confidentiality and preservation of a site. Landowners should be informed of criminal penalties within the law for the unlawful and intentional destruction, degradation or removal of California Native American cultural or spiritual places located on public or private lands (Public Resources Code §5097.995).15

Confidentiality Procedures for Private Landowner Involvement

In order to successfully preserve or mitigate impacts to a California Native American cultural place, local governments and tribes may find it necessary or advantageous to involve private landowners early in the consultation process. Often, landowners may not be aware that a cultural place exists on their property, or alternatively, may not realize that the site has become subject to a general plan adoption or amendment. Due to the confidential nature of certain information involved, local governments should consider working with tribes to adopt procedures that would balance the value of landowner involvement with the need for cultural place confidentiality. Local governments and California Native American tribes may wish to consider the following procedures that would inform and potentially involve landowners in the consultation process, without compromising the confidentiality of a cultural place:

Local governments, at the request of a tribe, may consider contacting a landowner directly and, without disclosing the exact location or characteristics of the site, inform the landowner of the existence of a culturally significant place on their property. A local government may consider inquiring as to whether the landowner would be willing to further discuss the matter directly with the appropriate tribal representative under a non-disclosure agreement.

Local governments may consider giving the landowner’s contact information to a tribe so that the tribe may contact the landowner directly. Discussion about conservation easements is an example of a case in which a tribe and landowner may wish to meet without the direct participation of the local government.

Local governments may also consider informing a landowner of the ability of landowners to access CHRIS for cultural resource information specific to their land. Local governments should keep in mind that the CHRIS system does not contain a catalog of every cultural place within California.

15 Due to a drafting error, SB 18 contains multiple references to Public Resources Code (PRC) §5097.995 which is no longer in existence. In 2004, PRC §5097.995 was amended and renumbered to PRC §5097.993 by Senate Bill 1264 (Chapter 286). Local governments should refer to PRC §5097.993 when looking for PRC §5097.995.
IX. Procedures to Facilitate Voluntary Landowner Protection Efforts

In addition to their own consultation with tribes, local governments may help facilitate landowner participation in preserving and protecting cultural places. While each city and county should develop its own policies on landowner participation, general strategies for encouraging landowner awareness of and participation in cultural place protection may include:

- Collaborating with local tribes to offer cultural awareness and other educational events for landowners.
- Encouraging landowner participation in discussions about appropriate preservation and mitigation measures.
- Promoting the use of conservation easements and other private conservation efforts.

It should be noted that SB 18 does not require landowners to dedicate or sell conservation easements for the purpose of cultural place preservation. Neither are local governments required to play a direct role in any private conservation activity. Government Code §65040.2(g), however, does require OPR to recommend procedures to facilitate voluntary landowner participation in the preservation and protection of cultural places.

Landowner Education and Participation

Public workshops, seminars, and other educational sessions may provide forums for tribal representatives to share tribal and cultural information and discuss general protection concerns with landowners. These sessions may build cultural awareness, develop landowner understanding of the importance of cultural places, and also encourage further dialogue between tribes and landowners. These sessions should generally inform landowners of the importance of cultural places and should not compromise the confidentiality of a specific cultural place.

Local governments may also encourage landowner participation in discussions about preserving or mitigating impacts to a cultural place located on a landowner’s private property. (See Section VII and Section VIII for further information.)

Private Conservation Efforts

Although local governments are not required to play a direct role in any private conservation activity, they can promote the use of conservation easements and other conservation programs to protect cultural places. Local governments may consider adoption of a policy to encourage voluntary landowner participation in protection programs. Local governments may also develop and distribute informational materials about potential incentives for private conservation efforts, such as Mills Act tax credits or the tax benefits of donating or selling conservation easements.

A conservation easement is a voluntary agreement between a landowner and an authorized party (including a tribe pursuant to Civil Code 815.3(c)) that allows the easement holder to limit the type or amount of development on the property while the landowner retains title to the land. The landowner is compensated for voluntarily giving up some development opportunities. The easement is binding upon successive owners of the land. It is common for a conservation
easement to be recorded against the property as a way to inform future purchasers of the existence of an easement. Granting of a conservation easement may qualify as a charitable contribution for tax purposes.

Should a landowner choose to sell a conservation easement, the landowner should first consult with all tribes affiliated with the land on which the easement is proposed. It is also recommended that tribes hold conservation easements only within their areas of cultural affiliation.

As an alternative to conservation easements, local governments may also promote private preservation of cultural places through the use of Memoranda of Understanding (MOU). As a direct agreement between a landowner and tribe, a MOU allows a tribe and landowner to agree on appropriate treatment of cultural places located on the landowner’s private property and may give certain privileges to tribes, such as access to perform ceremonial rituals. MOUs may also be used to facilitate co-management by tribes, landowners, and conservation organizations. For example, if a conservation easement established for wildlife protection also contains a cultural place, the landowner, conservation entity, and tribe could agree on co-management (in the MOU) that protects both the habitat and cultural place.
Part E
Open Space

Section X provides information for incorporating the protection of cultural places into the open space element of the general plan.

X. Open Space for the Protection of Cultural Places

SB 18 amended Government Code §66560 to include open space for the protection of cultural places as an allowable purpose of the open space element. Local governments may, but are not required to, consider adopting open space policies regarding the protection of cultural places. Local governments may wish to consider the following when and if they develop such policies:

- Limiting the types of land uses allowed in an open space designation in order to protect the cultural place from potentially harmful uses.
- Facilitating access to tribes for maintenance and traditional use of cultural places.
- Protecting the confidentiality of cultural places by not disclosing specific information about their identity, location, character, or use.
- Giving developers incentives to protect cultural places through voluntary measures.
- Incorporating goals for protection of cultural places in open space that is also part of a regional habitat conservation and protection program, for example, a local or regional Habitat Conservation Plan (HCP) or Natural Community Conservation Program (NCCP).
- Reviewing and conforming other elements of the general plan that deal with conservation of natural and cultural resources to the open space element.

The development of open space policies for the protection of cultural places should be done in consultation with culturally-affiliated tribes. It is important to note that the importance of cultural places is not solely rooted in the land or other physical features or objects related to the land on which the cultural place is located. The sense of “place” is often as important as any physical or tangible characteristic. It may be important to a tribe to preserve a certain non-material aspect of a cultural place, such as views or vantage points from or to the cultural place. Cultural interpretation and importance of the place to the tribe should be taken into consideration, in addition to any potential archaeological importance of the place. With this in mind, local governments should be prepared to consider creative solutions for preservation and protection of cultural places.

Neither Government Code §65560(b)(5) nor Government Code §65562.5 mandate local review or revision of the existing open space element of the general plan to inventory and/or protect cultural places. However, local governments should consider doing so in future updates of or comprehensive revisions to the open space element.
XI. **Additional Resources**

In addition to the information provided in the 2005 Supplement to the *General Plan Guidelines*, local governments may wish to investigate additional resources that can provide more detailed information about Native American people, cultural places, tribal governments, consultation, confidentiality, conservation easements, and other issues related to SB 18. Sources of additional information include federal and state government agencies that have previous experience with tribal consultations, colleges and universities, private organizations and foundations, and the literature and web sites associated with these groups. Although it is not intended to be a comprehensive list, some potentially useful resources are included below.

It is important that local governments keep in mind that Native American tribes are often the best source of information concerning a cultural place's location and characteristics. Local governments are encouraged to seek this information, if available, directly from the tribes themselves.

**State Agencies**

**California Native American Heritage Commission (NAHC)**

The NAHC is the state commission responsible for advocating preservation and protection of Native American human remains and cultural resources. NAHC maintains confidential records concerning places of special religious or social significance to Native Americans, including graves and cemeteries and other cultural places. The NAHC reviews CEQA documents to provide recommendations to lead agencies about consulting with tribes to mitigate potential project impacts to these sites.

The NAHC maintains a list of California tribes and the corresponding contacts that local governments should use for the purpose of meeting SB 18 consultation requirements.

The NAHC web site also provides a number of links to information about federal and state laws, local ordinances and codes, and cultural resources in relation to Native Americans.

Native American Heritage Commission  
915 Capitol Mall, Room 364  
Sacramento, CA 95814  
Phone: (916) 653-4082  
Fax: (916) 657-5390  
http://www.nahc.ca.gov
California Office of Historic Preservation (OHP)
California Historical Resources Information System (CHRIS)
Pursuant to state and federal law, the California Office of Historic Preservation (OHP) administers the California Historical Resources Information System (CHRIS). The CHRIS is organized by county and managed by regional information centers (posted on the OHP website). These CHRIS centers house records, reports, and other documents relating to cultural and archaeological resources, and provide information and recommendations regarding such resources on a fee-for-service basis. Local governments may enter into agreements with CHRIS information centers to establish procedures and protocols for requesting searches of historical resource records.

The OHP also provides assistance to local governments to encourage direct participation in historic preservation. OHP provides technical assistance to local governments including training for local commissions and review boards, drafting of preservation plans and ordinances, and developing archaeological and historical surveys.

Office of Historic Preservation
P.O. Box 942896
Sacramento, CA 94296-0001
Phone: (916) 653-6624
Fax: (916) 653-9824
http://www.ohp.parks.ca.gov

California Department of Conservation
Division of Land Resource Protection (DLRP)
The DLRP works with landowners, local governments, and researchers to conserve productive farmland and open spaces.

California Department of Conservation
Division of Land Resource Protection
801 K Street, MS 18-01
Sacramento, CA 95814-3528
Phone: (916) 324-0850
http://www.consrv.ca.gov/DLRP/index.htm

California Department of Housing and Community Development
California Indian Assistance Program (CIAP)
The California Indian Assistance Program's primary role is to assist tribal governments with obtaining and managing funds for community development and government enhancement. CIAP's 2004 Field Directory of the California Indian Community is a good reference for California Native American tribes, including location of Indian lands, federal recognition status of tribes, history of laws affecting tribes, and other programs and agencies involved in tribal relationships.
California Department of Transportation (DOT)
Native American Liaison Branch
The California DOT administers most of its projects with some federal funding and is therefore subject to Section 106 consultation requirements under NHPA. The department has a Native American Liaison Branch (NALB), with headquarters in Sacramento and Native American Liaisons in each of its twelve districts. The NALB web site contains policy statements and links to other useful resources.

Office of Regional and Interagency Planning
Native American Liaison Branch
1120 N Street, MS 32
Sacramento, CA 95814
Phone: (916) 651-8195
Phone: (916) 654-2389
Fax: (916) 653-0001
http://www.dot.ca.gov/hc/rpp/offices/orip/na/native_american.htm

Federal Agencies

Federal Highway Administration – AASHTO (American Association of State Highway and Transportation Officials) Center for Environmental Excellence
The AASHTO Center for Environmental Excellence provides a web site designed to provide tools for Section 106 of the National Historical Preservation Act (NHPA) tribal consultation. This site contains documents and links to web sites that address key aspects of tribal consultation relevant to SB 18. Information also includes federal, tribal, and state policies and protocols, case law, and best practices as implemented by federal and state agencies and tribes.
http://environment.transportation.org/environmental_issues/tribal_consultation/overview.htm

U.S. Army Corps of Engineers
The U.S. Army Corps of Engineers has lasting and positive relations with many tribal governments. The “Tribal Affairs and Initiatives” section of their web site provides information regarding the U.S. Army Corps of Engineers’ approach to tribal consultation and preservation of cultural resources.
USDA Forest Service
The Forest Service has extensive experience in consulting with Native American tribes. The Forest Service's *Forest Service National Resource Book on American Indian and Alaska Native Relations* is an excellent resource book on tribal beliefs and practices, tribal consultation, and laws affecting Native Americans. The Forest Service's *Report of the National Tribal Relations Program Implementation Team* (June 2003) reviews relationships between the Forest Service and tribes, identifying pervasive problems and concerns and making recommendations to improve the effectiveness of the program at maintaining long-term collaborative relationships with tribal governments.

USDA Forest Service
Regional Office of Tribal Relations
Sonia Tamez
1323 Club Drive
Vallejo, CA 95492
Phone: (707) 562-8919
www.r5.fs.fed.us

USDA National Sustainable Agriculture Information Service (ATTRA)
The ATTRA provides information and other technical assistance to farmers, ranchers, Extension agents, educators, and others involved in sustainable agriculture in the United States. The ATTRA publication, *Conservation Easements, Resource Series (2003)*, provides an overview of what holding and selling conservation easements entail.

ATTRA - National Sustainable Agriculture Information Service
PO Box 3657
Fayetteville, AR 72702
Phone: (800) 346-9140
Fax: (479) 442-9842
http://attra.ncat.org/

USDA Natural Resources Conservation Service (NRCS)
The mission of the NRCS is to address natural resource conservation on private lands. The website contains links to various conservation technical resources and to additional contact information for area offices and service centers.

California NRCS State Office
430 G Street #4164
Davis, CA 95616-4164
Phone: (530) 792-5600
Fax: (530) 792-5610
http://www.ca.nrcs.usda.gov/

U.S. Department of Interior – Bureau of Indian Affairs
The Bureau of Indian Affairs (BIA) is responsible for the administration and management of 55.7 million acres of land held in trust by the United States for American Indians, Indian tribes, and Alaska Natives. Developing forestlands, leasing assets on these lands, directing agricultural
programs, protecting water and land rights, developing and maintaining infrastructure, and economic development are all agency responsibilities. The BIA web site includes links to other federal agencies, inter-tribal organizations, environmental organizations, and cultural resources.

Bureau of Indian Affairs
Phone: (202) 208-3710

U.S. Department of Interior – Bureau of Land Management
The Bureau of Land Management manages 261 million acres of land and has staff whose duties include coordination and consultation with Native Americans. The Bureau publishes *Native American Coordination and Consultation, Manual Section 8160 with Handbook H-8160-1*. The handbook is devoted to providing general guidance for tribal consultation, and can be found online at: http://www.blm.gov/nhp/efoia/wo/handbook/h8160-1.html.

Bureau of Land Management
California State Office
2800 Cottage Way, Suite W-1834
Sacramento, CA 95825-1886
Phone: (916) 978-4400
Phone: (916) 978-4416
TDD: (916) 978-4419
http://www.ca.blm.gov/

U.S. Department of Interior – National Park Service
The following National Park Service web site specifically focuses on cultural resource preservation. The site includes links to tools for cultural resource preservation, different areas of cultural resource protection and different offices of the National Park Service that handle cultural preservation issues. Included among these offices is the American Indian Liaison Office, the web site of which contains a number of information resources that are potentially useful to local governments learning how to consult with Native American tribes on land use policy.
http://www.cr.nps.gov

U.S. Department of Interior – Office of Collaborative Action and Dispute Resolution
This web site provides links to federal agencies’ policies on tribal consultation:

Colleges and Universities
Humboldt State University
The Center for Indian Community Development (CICD)
The CICD primarily focuses on Indian language education, but also acts in the capacity of a liaison between Native American tribes and the community. The CICD includes a cultural resource facility where information about Native American burial grounds and cultural resource monitoring can be found. The CICD offers useful publications on tribal governments and cultural approaches to environmental protection of Native American lands on its web site.
University of California, Los Angeles

American Indian Studies Center (AISC)
The AISC has spent a number of years conducting research on issues affecting Native American Indian communities. The center has sponsored conferences on issues including California tribes, repatriation, federal recognition, and Indian gaming. The AISC offers a number of publications on issues ranging from Contemporary Native American Issues and Native American Politics to Native American Theater and Native American Literature.

UCLA American Indian Studies Center
3220 Campbell Hall
Los Angeles, CA 90095-1548
Phone: (310) 825-7315
Fax: (310) 206-7060
http://www.aisc.ucla.edu/

University of California, Los Angeles School of Law

Native Nations Law and Policy Center (NNLPC)
The mission of NNLPC at UCLA Law is to support Native nations throughout the United States, with a special focus on California tribes, in developing their systems of governance and in addressing critical public policy issues and to apply the resources of state-supported education together with tribal expertise to address contemporary educational needs for California Tribes. The Research and Publications division secures grants, carries out research, and sponsors conferences and roundtables drawing together scholars, tribal leaders, and federal/state policymakers.

UCLA School of Law
P.O. Box 951476
Los Angeles, CA 90095-1476
Phone: (310) 825-4841
http://www.law.ucla.edu/students/academicprograms/nativenations/nnlapc.htm

Private Organizations and Foundations

American Farmland Trust (AFT)
Since its founding in 1980, the AFT has helped to achieve permanent protection for over a million acres of American farmland. The AFT focuses its strategies on protecting land through publicly funded agricultural conservation easement programs and encouraging conservation practices in community planning and growth management.
Inter-Tribal Council of California, Inc. (ITCC)
The key role of the Inter-Tribal Council of California (ITCC) is to assist in bridging relationships between California tribal governments and other organizations, including local government agencies. The ITCC offers workshops on Native American cultural proficiency and tribal governments for the purpose of educating non-Native Americans on how to effectively communicate with tribal governments, in addition to other training and technical assistance. The ITCC is experienced in assisting the development of Memoranda of Understanding and Agreement, protocols, and educational outreach materials.

Land Trust Alliance (LTA)
The Land Trust Alliance promotes voluntary land conservation by offering training, conferences, literature, reports, and other information on land conservation. The LTA has several publications discussing conservation techniques. Their web site addresses different conservation options for landowners and includes questions and answers about conservation easements, land donation, and bargain sale of land.

Native American Land Conservancy
The Native American Land Conservancy is a nonprofit corporation formed for the conservation and preservation of Native American sacred lands.
The Nature Conservancy (TNC)
The Nature Conservancy is a non-profit organization that works with communities, businesses, and individuals to preserve lands with natural and cultural resources.

The Nature Conservancy
4245 North Fairfax Drive, Suite 100
Arlington, VA 22203-1606
http://nature.org/

Southern California Tribal Chairmen's Association (SCTCA)
The Southern California Tribal Chairmen's Association (SCTCA) is a multi-service non-profit corporation established in 1972 for a consortium of 19 Federally recognized Indian tribes in Southern California. The Primary goals and objectives of SCTCA are the health, welfare, safety, education, culture, economic and employment opportunities for its tribal members. A board of directors comprised of tribal chairpersons from each of its member tribes governs SCTCA.

Southern California Tribal Chairmen's Association
Denis Turner
Executive Director
Phone: (760) 742-8600 x100
http://www.sctca.net/

Trust for Public Land (TPL)
The Trust for Public Land (TPL) is a national, nonprofit, land conservation organization that conserves land for people to enjoy as parks, community gardens, historic sites, rural lands, and other natural places, ensuring livable communities for generations to come. Since 1972, TPL has worked with willing landowners, community groups, and national, state, and local agencies to complete more than 2,700 land conservation projects in 46 states, protecting nearly 2 million acres.

Trust for Public Land National Office
116 New Montgomery St., 4th Floor
San Francisco, CA 94105
Phone: (415) 495-4014
Fax: (415) 495-4103
http://www.tpl.org
Exhibit A: Sample Request to the NAHC for Tribal Contact Information

**LOCAL GOVERNMENT**
**TRIBAL CONSULTATION LIST REQUEST**
NATIVE AMERICAN HERITAGE COMMISSION
915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-4082
(916) 657-5390 - Fax

<table>
<thead>
<tr>
<th>Project Title:</th>
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<tbody>
<tr>
<td>Local Government/Lead Agency:</td>
<td>Contact Person:</td>
</tr>
<tr>
<td>Street Address:</td>
<td>Phone:</td>
</tr>
<tr>
<td>City:</td>
<td>Zip:</td>
</tr>
</tbody>
</table>

Project Location:

- County: City/Community: 

Local Action Type:

- General Plan
- General Plan Element
- Specific Plan
- General Plan Amendment
- Specific Plan Amendment
- Pre-planning Outreach Activity

Project Description:

**NAHC Use Only**

Date Received: 
Date Completed: 

Native American Tribal Consultation lists are only applicable for consulting with California Native American tribes per Government Code Section 65352.3.
FACT SHEET

THE STEPS IN GRANTING A CONSERVATION EASEMENT

Who may grant an easement and to whom can they grant it?

A property owner can grant a conservation easement over all or a portion of his or her property. If the property belongs to more than one person, all owners must consent to granting the easement. If the property is mortgaged, the owner must obtain an agreement from the lender to subordinate its interests to those of the easement holder so that the easement cannot be extinguished in the event of foreclosure.

If the easement donor wishes to claim tax benefits for the gift, he or she must donate or sell it for less than fair market value to a public agency or to a conservation organization or historic preservation organization that qualifies as a public charity under Internal Revenue Code Section 501(c)(3). Most land trusts meet this criterion.

What are the steps in the transaction?

1. Initial contact between the property owner and the conservation organization.

A property owner usually initiates contact, requesting information from the conservation organization on the process for recording a conservation easement. The conservation organization will generally ask questions to determine if the property meets the criteria established by the organization for such projects. This is also the point at which the landowner's desire for the property and financial goals are identified. The transaction process is generally laid out for the landowner, and may vary somewhat from the steps outlined herein. At this point, the conservation organization will also generally explain its policy for a contribution to an endowment fund for managing the easement.

2. Consult with legal and tax advisors.

If the parties decide to proceed with the easement, the conservation organization will always advise the property owner to seek legal and tax advice. While conservation organizations generally will assist landowners wherever possible in the transaction, and can often refer him or her to qualified professionals, they cannot provide such advice to landowners.
3. Conduct a tour of the property with the landowner.

The tour serves two purposes. First, the conservation organization will want to confirm that the potential easement truly meets their program goals. Second, the organization will want to discuss the resources on the property with the landowner and identify potential uses and restrictions on the property.

4. Obtain title information.

This information serves several purposes:

- It identifies the legal owner(s) of the property.
- It furnishes the legal property description that is included in both the baseline data inventory and the easement document.
- It identifies any liens and encumbrances on the property, which may need to be subordinated to the conservation easement (e.g. mineral rights, existing right of ways).

5. Compile baseline data inventory of property.

The conservation organization will study and record the condition of the property, including such information as vegetative communities, water courses, existing uses, significant habitat, and fences, roads and other structures. The information is generally mapped with accompanying narrative and photographs.

This inventory serves three purposes:

- Establishes the types and location of resources on the site that should be addressed by restrictions in the easement.
- Establishes the condition of the property at the time of the gift, as required by the IRS when an easement donor retains rights that, if exercised, could impair the conservation values of the property.
- Establishes a baseline for monitoring the easement.

6. Develop the purpose statement.

This statement identifies the conservation values to be protected, is the cornerstone of the easement, and serves four functions:

- It identifies which of the five IRS categories of conservation easements is addressed (this is required for IRS deductibility).
543
Steps in granting a Conservation Easement
page 3

- Any future change in use not specifically allowed under the language of the easement will be evaluated per its consistency with protection of the conservation values identified in the statement of purpose.
- A court will look to the purpose statement in determining conformance of activities to the easement.
- The purpose statement will guide monitoring methods.

The specificity of the purpose statement will depend on the resource be protected. For example, where an easement is established to protect a specific species (e.g. salmon), the purpose statement will include reference to the species, and perhaps the life stage (e.g. migration, spawning and rearing). Alternatively, an agricultural easement may include a general purpose statement regarding the general importance of agriculture at the local, regional, and state level and the importance of the particular property within that framework.

7. Design the conservation easement.

In identifying the easement, two issues should be considered:

- How does the area to be protected function?
  The analysis of the area’s function will be based on the type of resource being protected. For example, where the purpose of the easement is to protect an aquatic ecosystem (e.g. stream, wetland or riparian), hydrologic links upland and upstream will need to be considered. If protecting an endangered species, its habitat needs must be identified. A similar analysis can be conducted for an agricultural operation, identifying water source, type of crop, timing of operations, and external impacts (e.g. dust and pesticide drift).
- What are the adjacent uses and their impacts?
  Residential development will have different impacts on a protected area than commercial. Both the built environment and daily activities need to be taken into account. Issues to be analyzed include changes in water quality and flow patterns, use of exotic plant materials, noise, and daily patterns of use.

8. Develop uses and restrictions.

This step in the process addresses three sections of the easement: rights of the grantee, prohibited uses and reserved rights.

Rights of the grantee. The scope of rights conveyed to the grantee depends on the type of easement in question. Recreational or educational easements, for example, might contain highly detailed descriptions of permitted activities, circumscribed by specific conditions and qualifications and confined to precisely delineated time periods. Natural ecosystem
easements, on the other hand, might delegate broad authority to the grantee to manage or maintain the property and to make its own determination regarding access. The greater the degree of public access or management control conveyed by an easement, the greater a grantee's potential liability.

A grantee’s rights generally include a broad statement regarding protection of the conservation values of the property. Where the easement covers an area that will continue in productive use (e.g. agriculture), the grantee’s rights section usually includes a statement requiring the exercise of those rights without undue interference with the landowner’s use and quiet enjoyment of the property. The grantee’s rights section almost always includes reference to the grantee’s ability to monitor the easement and pursue remedies for violations.

Prohibited uses. It is important to remember that a conservation easement can only prohibit; it cannot prescribe action. Therefore, the prohibited uses section is where the real work of protecting the conservation values is done. Conservation easements generally spell out a specific list of prohibited uses. However, the easement may allow certain prohibited uses in restricted areas covered by the easement. Each restriction is negotiated on a case-by-case basis for a particular property. Since every eventuality cannot be anticipated, conservation easements usually include a general prohibition on all uses inconsistent with the purpose of the easement, and reserve to the grantor the right to engage in all uses that are not inconsistent. Usually, the restrictions address one or more of the following issues:

- subdivision and development;
- commercial or industrial use;
- new and existing buildings, structures, roads, and other improvements;
- alteration of the land surface;
- mineral development;
- waste dumps;
- utility lines;
- signs;
- soil and water;
- wetlands;
- wildlife and wildlife habitat; and
- trees, shrubs, and other vegetation.

Reserved rights. As a matter of law, the reserved rights of the grantor are generally all those rights of the landowner not expressly conveyed to the grantee. This section will often expressly reserve certain rights to the landowner, such as continued agricultural use, construction of a certain number of residences in certain locations, etc. However,
consistency with the purpose of the easement is the test of whether a landowner has a right that has not been expressly reserved in the easement.

9. Develop monitoring requirements.

The grantee's ability to monitor the easement is provided for in the "Rights of the Grantee" section. Monitoring can be of two types: compliance monitoring and biological monitoring. Most easements provide for compliance monitoring, and certain remedies should violations of the easement's terms be found. The easement may be specific about the timing and methods of monitoring, or may only state that monitoring is allowed, with a requirement that it be conducted with reasonable notice. The baseline data inventory serves as the starting point for compliance monitoring. The baseline data inventory is also a baseline for biological monitoring, conducted where a conservation organization wishes to determine if the purpose of the easement is being fulfilled. In this case, monitoring would not lead to enforcement actions, but might lead to changes in the conservation organization's future easements.

10. Sign and record the easement.

11. Obtain a qualified appraisal.

An appraisal is only necessary if the landowner wishes to claim a tax deduction for the value of a donated or bargain sale easement. Obtaining the appraisal is the landowner's responsibility, although land trusts are usually able to refer him or her to a qualified appraiser.
MODEL CONSERVATION EASEMENT
What each of the parts mean.

Recitals (The "whereas's")

This section sets forth background information essential for understanding both the legal and factual basis for the creation of the easement. These clauses include the statement of intent of the grantor and grantee in regards to the resources on the property.

1. Purpose

This section is the touchstone of the easement, in that any future decision about use of the property will be evaluated in regards to the conservation values identified in the statement of purpose.

2. Rights of Grantee

Generally, all conservation easements include the rights of inspection and enforcement of the terms of the easement (See Section 6: Grantee’s Remedies). Beyond these, the scope of rights conveyed to the grantee depends on the type of easement in question. Recreational or educational easements will require greater access and thus more detail in the description of the rights of the grantee. The greater the degree of access or management control by the grantee, however, the greater a grantor’s exposure to liability issues. The broad description of the grantee’s rights in this model easement includes a requirement to exercise those rights without undue interference with the landowner's use and quiet enjoyment of the property.

3. Prohibited Uses

This easement allows any uses consistent with the purpose of the easement, and includes a section where specific uses are prohibited. The list of prohibited uses are determined jointly by the landowner and conservation organization.

4. Reserved Rights

The easement reserves all rights to the property owner that are not inconsistent with the purpose of the easement, and includes a section where specific rights are reserved. These rights are transferable with the property.
5. Notice of Intention to Undertake Certain Permitted Actions

For federal tax deductibility, the IRS requires that the grantor agree to notify the grantee in writing prior to exercising reserved rights that might have an adverse impact on the conservation values the easement is intended to protect.

6. Grantee's Remedies

Section 6 - 6.4 address enforcement of the terms of the easement by the grantee.

7. Access

In this model easement, no public access is allowed. If an easement were to allow access, provision is usually made in the "Purpose" or "Rights of the Grantee" sections, with details provided here.

8. Costs and Liabilities

Sections 8 - 8.2 address the division of costs of land vs. easement ownership.

9. Extinguishment

For an easement to qualify for federal tax deductibility, extinguishment may only take place by a judicial proceeding.

9.1. Proceeds

IRS regulations require that, when a deductible easement is extinguished and the property subsequently sold or exchanged, the grantee is entitled to a proportional share of the proceeds.

9.2 Condemnation

A similar requirement is made in this section for condemnation.

10. Assignment

This section provides for assignment only to another qualified conservation organization, as required by the IRS for deductible easements.
11. **Subsequent Transfers**

This section is included as a practical means of increasing the likelihood that future purchasers, encumbrances, or lessees will have actual notice of the easement ahead of the transfer.

12. **Estoppel Certificates**

This provision requires the grantee to certify the landowner's good standing upon request.

13. **Notices**

Recipients' name and addresses for written communication regarding the easement is provided.

14. **Recordation**

All conservation easements are recorded.

15. **General Provisions**

These statements are standard terms, routinely included in substantial written agreements.
DEED OF CULTURAL CONSERVATION EASEMENT

THIS GRANT DEED OF CULTURAL CONSERVATION EASEMENT is made this __________ day of __________________________ by ________ (Whoever is giving this) ________ ("Grantor"), a corporation (or individual) qualified to do business in the State of California, having an address at __________________________, in favor of ________ (Whoever is getting this) ________ ("Grantee"), a qualified California nonprofit corporation having an address at __________________________.

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property known as _____________________________ located in ________ (describe) in ________ County, California and more particularly described in Exhibit A, a map attached hereto and incorporated by this reference ("the Property"); and

WHEREAS, the property possesses significant cultural, historic and (natural or other) values (collectively "cultural conservation values") of great importance to Grantor, to the (specific tribe or group) and other native people of the region, and the people of the State of California; and

WHEREAS, the specific cultural and natural conservation values of the Property are further documented in an inventory of relevant features of the Property, ("Baseline Documentation") (or which are described in an exhibit which is incorporated into the easement and recorded) which are not recorded
with this Deed but shall remain in the files at the offices of both the Grantor and Grantee, including reports, maps, photographs, declarations, and other documentation which generally describes the property at the time of the grant of the easement, and

WHEREAS, in particular, the property has values as *(describe the kind and qualities of the property such as ...)* a natural forest and mountain ecosystem, including springs, rock formations, trees, native plants, birds, wildlife, and other ecological and geological features, and moreover, the property has important cultural values as a traditional place of gathering, ritual, ceremonial and archeological significance from *(scope of time)* thousands of years of continuous use by the *(native group)*, and the combination of these natural and cultural values are referred to herein as "cultural conservation values"; and

WHEREAS, Grantor intends that both the natural and cultural conservation values of the Property be preserved and maintained by the continuation of the rights of the Grantor existing at the time of this grant that do not significantly impair or interfere with those values; and

WHEREAS, Grantor further intends, as owners of the Property, to convey to Grantee the right to have access to the property for cultural and ceremonial use and to preserve and protect the cultural conservation values of the Property in perpetuity; and

WHEREAS, Grantee *(Organization)* is a publicly supported, tax-exempt nonprofit organization, qualified under Section 501(c)(3) of the Internal Revenue Code, whose primary purpose is natural and cultural historic preservation and educational; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the cultural conservation values of the Property for the benefit of this generation and generations to come;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to
the laws of the State of California and California Civil Code Section 815 et. seq., Grantor hereby voluntarily grants and conveys to Grantees a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement") and Grantees accept the Easement and agree to honor the intentions of the Grantor to preserve and protect the Property.

1. **Purpose.** It is the purpose of this Easement to protect the (state values such as sacred sites of the group) located on the property, to honor them and protect them forever and to assure that the Property will be retained forever in its natural state and for its cultural conservation values and to prevent any use of the property which would significantly impair or interfere with the cultural conservation values of the Property. Grantor intends that this Easement will confine the use of the property to activities to those that are consistent with the purpose of this Easement.

2. **Rights of Grantees.** To accomplish the purpose of this Easement the following rights are conveyed to Grantees by this Easement:
   (a) To identify, document, preserve and protect the cultural conservation values of the Property; and
   (b) To enter upon the Property at reasonable times, and for a reasonable duration, without notice to the Grantor, in order to carry out cultural practices consistent with the purpose of the Easement; and
   (c) To enter upon the Property at reasonable times, in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry for monitoring purposes shall be upon prior reasonable notice to Grantor, and Grantees shall not unreasonably interfere with Grantor's use of the Property; and
   (d) To protect the Property from any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to paragraph 6.

3. **Prohibited Uses.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
(a) Any and all logging, mining, commercial use, development or resource extraction, road building or surface disturbance of the Property.

(b) Any and all hunting, camping, and recreational uses of the Property that are inconsistent with the intent of this Easement, including the use of fire without the mutual consent of the parties. Occasional ceremonial use of the site is a use that is deemed consistent with the intent of the Easement.

(c) Grantor and Grantee shall cooperatively enforce prohibited uses of the Property by other parties or the general public.

(Add others here or in Exhibit.)

4. Reserved Rights. Grantors reserve to themselves, and to their representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) Grantor has the right to practice prudent and generally accepted forest management activities on land of the Grantor outside the Property and the full and unhindered use of existing and future roads on lands of the Grantor outside of or bordering on the Property.

(Add other rights)

4.1 Limitations on Grantor’s Responsibilities.

(a) Grantor shall not be responsible for and unlawful actions of the Grantee or Grantee’s representatives. (This is not needed, negotiated term.)

(b) Grantor assumes no actual or implied responsibility to insure that road conditions allow vehicular access to the Property. (Sample of negotiated term.)

5. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantor to notify Grantees prior to undertaking certain permitted activities, is to afford Grantees an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required Grantor shall notify Grantees in writing not less than 30 (thirty) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope,
design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantees to make an informed judgment as to its consistency with the purpose of this Easement.

5.1 Grantee's Approval. Where Grantees' approval is required, Grantees shall grant or withhold its approval in writing within 30 (thirty) days of receipt of Grantor's written request therefor. Grantees' approval may be withheld only upon a reasonable determination by Grantees that the action as proposed would be inconsistent with the purpose of this Easement. Should no written response by the Grantee be offered within the thirty day period, Grantor may proceed with the action but Grantee's approval rights are not waived.

6. Grantees' Remedies. If Grantees determine that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within 30 (thirty) days after the receipt of notice, or under circumstances where the violation cannot reasonably be cured within a 30 (thirty) day period, Grantor fails to begin curing the violation within the 30 day period, or fails to continue diligent efforts to cure such violation until finally cured, Grantees may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, including damages for loss of natural, cultural, scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantees, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantees, in their sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the cultural conservation values of the Property, Grantees may pursue their remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantees' rights under this paragraph apply equally
in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that since the cultural conservation values of the Property are of inestimable value and some may be intangible, that Grantees' remedies at law for any violation of the terms of their Easement may be inadequate and that Grantees shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantees may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantees' responsibility to monitor and conserve the cultural conservation values of the Property are hereby recognized as being unique and the fact that some of these values are intangible is understood, and thus the necessity of proving the pertinent cultural values of the property will not be required in pursuing Grantees' remedies under this Easement. Grantees' remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Liquidated damages are not provided for in this Easement.

6.1 Costs of Enforcement. Any costs incurred by Grantees in enforcing the terms of this Easement against Grantor, including without limitation, costs of suit and attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be decided by Grantees' remedies at law, or equity. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's costs of suit including, without limitation, attorney's fees shall be also born by Grantor, in recognition of the fact that Grantee is a small nonprofit cultural preservation organization which does not have the financial resources to pay Grantor's costs and fees in any legal action.

6.2 Grantees' Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantees, and any forbearance by Grantees to exercise their rights under this Easement shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantees' rights under this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy, or be construed as a waiver.

6.3 Waiver of Certain Defenses. Grantor hereby waives any defense of laches,
estoppel, or prescription.

6.4 Acts Beyond Grantor's Control. Nothing contained in this easement shall be construed to entitle Grantees to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent abate, or mitigate significant injury to the Property resulting from such causes. Grantor will, wherever possible, not stage or allow the staging of fire fighting on the Property itself, or allow any fire suppression controls that adversely impact the Property or destroy the cultural conservation values.

7. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

8. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

8.1 Taxes. Grantor shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of this Easement, and shall furnish Grantee with satisfactory evidence of payment, upon request. It is intended that this Easement constitutes an enforceable restriction within the meaning of Article XIII, Section 8 of the California Constitution and that this Easement qualifies as an enforceable restriction under the provisions of California Revenue and Taxation Code Section 402.1 or successor statute.

8.2. Hold Harmless. (Custom language used here, samples of other clauses are included in cultural conservation easement training manual.)

It is the intent of the parties that by conveyance of this Easement, no additional risk or liability is assumed by either Grantor or Grantee for any actual
or alleged injury, death or property damage from any act, omission, condition or other matter related to or occurring on or about the Property, and that any liability that may exist at the time of the conveyance of the Easement continues and that the parties will continue to be governed by existing law, thus both parties agree not to hold the other harmless, or to indemnify each other, its members, directors, officers, employees, agents, and the individual Grantees' contractors and their heirs, agents, personal representatives, successors and assigns of each of them from and against liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with the existence or administration of this Easement.

9. Extinguishment. If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantees shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided for by California law at the time, in accordance with paragraph 9.1. Grantees shall use all such proceeds in a manner consistent with the cultural conservation purposes of this grant.

9.1 Proceeds. This Easement constitutes a real Property interest immediately vested in Grantees, which, for purposes of paragraph 9, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in the value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code of 1954, as amended. For purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant. Furthermore, it is understood that the cultural value of the Property to Grantees, as a religious and ceremonial site is
inestimable, and can not, nor should not be quantified or included in this calculation. The values referred to in this paragraph will, in recognition of the impossibility of assigning a monetary value to the sacred nature of the sites, will only apply to land and natural resource values protected by this Easement and which can be included in a calculation of fair market value to the Property and thus, by the above ratio, to the Easement.

9.2 Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantees shall be entitled to compensation in accordance with applicable law. Grantees should be able to apply such compensation to the acquisition of another interest in land with has cultural significance to Grantee, including ownership in fee simple.

9.3 Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantees are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of the Grantees under applicable laws, and any amendment shall be consistent with the purpose of this Easement, shall include reference to the significant cultural conservation values and be consistent with protecting those values and shall be perpetual in duration. Any such amendment shall be recorded in the official records of Shasta County, California.

10. Assignment. This Easement is transferable, but Grantees may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer, under Section 170(h) of the Internal Revenue Code of 1954, as amended, and the applicable regulations promulgated thereunder, and authorized to acquire and hold cultural conservation easement under Sections 815 et. seq. of the California Civil Code, or successor provision. Grantees shall require that the cultural conservation purposes that this grant is intended to advance, will continue to be carried out by any assignee. Grantee shall also notify Grantor in writing, and in advance of any assignment, and shall seek the approval of the Grantor to the assignment, but the right of assignment is exclusive to the Grantor, and shall not be abridged by Grantor.

11. Subsequent Transfers. Grantor agrees to incorporate the terms of this
Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including without limitation, a leasehold interest. Grantor further agrees to give written notice to the Grantees of the transfer of any interest at least sixty (60) days prior to the date of such transfer. The failure of the Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforcement in any way.

12. **Estoppel Certificates.** Upon request by Grantor, Grantees shall within thirty (30) days execute and deliver to grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

13. **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

To Grantees:

or to such other address as either party from time to time shall designate by written notice to the other.

14. **Recordation.** Grantees shall record this instrument in timely fashion in the official records of Shasta County, California, and may re-record it at any time as may be required to preserve rights in the Easement.

15. **Executory Limitation.** If Grantees shall cease to exist or cease to qualify or to be authorized to acquire and hold conservation easements under California Civil Code 815 et. seq. and a prior assignment is not made pursuant to paragraph 10, or refuse such rights and obligations, then the rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct pursuant to California law and with due regard to the requirements
for an assignment pursuant to paragraph 10, especially to the unique and significant character of the cultural values involved. Grantor may request relief from the court, in an action under this paragraph to void the Easement if Grantees or their assignees cease to be a qualified organization or refuse their rights and obligations under this Easement. Grantor agrees to give Grantee 60 (sixty) days notice of any intention to seek relief under this paragraph.


a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California.

b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of California Civil Code Section 815 et. seq.. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement. This instrument sets forth the entire agreement of the parties and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 9.3.

e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f) Joint Obligation. The obligations imposed by this Easement upon Grantor (if multiple grantors) shall be joint and several.

g) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.
h) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to the transfer shall survive transfer.

i) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties, each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

Grantee:

________________________

Grantor:

by ______________________  ______________________ (official capacity)

Acknowledgments.

Exhibits.

A - Map and description

B - Documentation or Specific Management and Use Agreements
Model Language for Title Restrictions
To Use in Transfer of Historic Properties

The following language is based on language developed for the Advisory Council on Historic Preservation's education and training program, as adapted by the author.

Introduction

Protective title restrictions are notoriously difficult to enforce. It is imperative that they be designed with the assistance of an attorney knowledgeable in the real estate laws of the jurisdiction within which the transfer is to take place. The provisions of such laws vary widely from place to place.

Following is an EXAMPLE of a restriction, in the form of a covenant. It consists of a "shell" covenant with several different kinds of "fillings" designed for use with different kinds of properties. DO NOT FOLLOW THIS EXAMPLE SLAVISHLY. BE SURE YOUR RESTRICTIONS ARE CONSISTENT WITH, AND ENFORCEABLE UNDER, THE REAL ESTATE LAWS OF THE STATE AND/OR LOCAL JURISDICTION. Be sure to attach the restriction to the MOA, PA, or other agreement document, and be sure to identify who will hold and enforce the restriction (in the below model, the "Covenantee").

Model Covenant

WHEREAS, the Historic Preservation Trust of Western Washington (hereinafter "Covenantee") is a non-profit corporation under Section 501 (c) (3) of the Internal Revenue Code of 1986 as amended, and

WHEREAS, Covenantee is authorized to accept and easements and covenants to protect places significant in local history and culture under the provisions of Title III, Section 776(m)(14) of the Washington Public Resources Code (hereinafter, "Title III," and

WHEREAS, the Federal Bureau of Fish Housing (hereinafter, "Bureau"), by its grant and conveyance of certain property rights hereunder to Big Ditch Development Corporation, Inc. (hereinafter "Covenantor") wishes to transfer to Covenantee hereinafore designated preservation covenants in and to that Property which is the subject of this conveyance (hereinafter the "Property"), and Covenantor, for itself and its heirs, administrators, devisees, successors, and assigns is willing to acquire and accept the Property subject to such covenants; and
WHEREAS, the administration and enforcement of these preservation covenants by Covenantee will assist in preserving the historic and cultural values of the Property;

NOW THEREFORE, Covenantor hereby covenants on behalf of itself and its heirs, administrators, devisees, successors, and assigns with Covenantee at all times to be bound by the following restrictions:

Here insert property-specific restrictions, such as:

- Model Archeological Restrictions
- Model Traditional Cultural Property Restrictions

REVISE AND ADD AS APPLICABLE TO MODELS #. Covenantor shall be permitted by the Covenantor at all reasonable times to inspect the Property, (including its interior spaces, in order to ascertain if the above conditions are being observed. (14) where applicable. "Covenantor agrees that inspections may, at the discretion of Covenantee, include entry into the interior of the Structure". The right of inspection shall include the right to take photographs, make drawings, and prepare written descriptions of the Property for the purpose of documenting the appearance, condition, and uses of the Property at the time of inspection.

#. In the event of a violation of these covenants, in addition to any remedy now or hereafter provided by law, Covenantee may, following reasonable notice to Covenantor, institute suit to enjoin said violation and to require, at the expense of Covenantor, the restoration of the Property to the condition and appearance required under these covenants. The successful party shall be entitled to recover all costs or expenses incurred in connection with such a suit, including all court costs and attorney’s fees.

#. Covenantor agrees that Covenantee may at its discretion, without prior notice to Covenantor, convey and assign all or part of its rights and responsibilities contained herein to a unit of federal, state, or local government or to a local, state, or national organization which is qualified under Title III and any successor provisions or under federal law to accept such rights and responsibilities.

#. These covenants shall be deemed to run with the land as covenants at law and equitable servitude, and extend to and are binding on Covenantor and Covenantee, and their respective heirs, administrators, devisees, successors, and assigns. The words "Covenantor" and "Covenantee" shall include all such persons, agencies, entities, and the like. The restrictions, stipulations, and covenants contained herein shall be inserted by Covenantor verbatim in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the Property or any part thereof.

#. The failure of Covenantee to exercise any right or remedy granted under this instrument with respect to any particular violation of these covenants shall not have the effect of waiving or limiting the exercise of such right or remedy with respect to the identical (or similar) type of violation at any subsequent time or the effect of waiving or limiting the
exercise of any other right or remedy.

The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter hereof.

Optional provisions for archeological sites

Except as hereinafter provided, Covenantor shall keep the Sandy Sondage Site (Site), as described and mapped in the report entitled: "A Deep Subject: the Sandy Sondage Site" (Marshall and Towne 1999; hereinafter the Deep Report) in its existing state in order to preserve its archeological value, and to that end, except as otherwise provided herein, Covenantor shall neither perform nor permit others to perform any of the following within the boundaries of the site as shown in Figure 17A of the Deep Report:

Note: Following are examples only

- placement of any earth, gravel, or similar substance on, above or below the ground.
- excavation or removal of any earth material, plant material, mineral substance or other substance or material, (except archeological resources retrieved pursuant to a research design approved in writing by Covenantee.
- construction of any building or placement of any other structure on, above or below the ground surface.
- conduct of any field investigation for any purpose, except field surveys and subsurface investigations authorized in writing by Covenantee;
- any other activity which by disturbing, altering or otherwise affecting the existing surface or subsurface of the Site that would be detrimental to the appropriate preservation of the Site.

Notwithstanding the above, disturbance of the ground surface or any other thing may be undertaken or permitted to be undertaken on the with the express prior written permission of Covenantee, signed by a fully authorized representative thereof. Should Covenantee require, as a condition of the granting of such permission, that Covenantor or the recipient of such permission conduct archeological data recovery operations or other activities designed to mitigate the adverse effect of the proposed activity on the Site, Covenantor shall ensure that such activities are carried out at no cost to Covenantee. Covenantor and Covenantee shall ensure that any archeological data recovery carried out is consistent with the Secretary of the Interior's Standard Guidelines for Archeological Documentation (48 FR 44734-37), and such other standards and guidelines as Covenantee may specify, including but not limited to standards and guidelines for research design, field work, analysis, preparation and dissemination of reports, disposition of artifacts and other materials, consultation with Native American or other organizations, and re-interment of human remains.

Covenantor shall make every reasonable effort to prohibit any person from vandalizing or otherwise disturbing the Site, and shall promptly report any such disturbance to Covenantee.
Optional provisions for traditional cultural properties

#, Except as hereinafter provided, Covenantor shall keep the Origin Cave, as described and mapped in the records of the Motomak Tribe and summarized in Covenantor's geographic information system (GIS), in its existing state in order to preserve its cultural value to the Motomak people, and to that end, except as otherwise provided herein, Covenantor shall neither perform nor permit others to perform any of the following:

Note: Following are examples only

- interrupt, interfere with, or discourage access to the Origin Cave by members of the Motomak Tribe and their guests.
- erect, construct, or move anything that would be visible from the mouth of the Origin Cave, without the express written permission of the Motomak Tribal Council and Covenantee.
- display signs, billboards, awnings or advertisements that would be visible from the mouth of the Origin Cave; provided, however, that Covenantor may, with prior written approval from and in the jointly exercised discretion of Covenantee and the Motomak Tribal Council, erect such signs or awnings as are compatible with the preservation and conservation purposes of this easement and appropriate to discourage trespass on, damage to, or inappropriate public use of the Origin Cave and its vicinity.
- make any public announcement of activities of the Motomak Tribe that are planned to take place at Origin Cave, without the express written permission of the Motomak Tribal Council.
- place any earth material, gravel, or other material on, above or below the ground within view from the mouth of Origin Cave.
- excavate or remove any earth material, plant material, mineral substance or other substance or material, except by Motomak Tribal members for purposes of medicine gathering or other cultural purposes.
- construct any building or place any other structure on, above or below the ground surface, except sweatlodges and other temporary structures built by Motomak religious or cultural practitioners.
- conduct archeological or anthropological field studies for any purpose at Origin Cave, except when Covenantee certifies in writing that permission for such a study has been given by the Motomak Tribal Council.
- any other activity which by disturbing, altering or otherwise affecting the Origin Cave or its vicinity would be detrimental to the appropriate preservation of Origin Cave's traditional cultural value.

#. Covenantor shall make every reasonable effort to prohibit any person from vandalizing or otherwise disturbing Origin Cave, and shall promptly report any such disturbance to Covenantee and the Motomak Tribe.
Tribal Lands Program:

Conserving Land for American Indians

Mission
The Trust for Public Land has led the conservation community in protecting sites of significance to Native Americans. At the request of tribes, TPL works to preserve and promote the unique land-based culture of American Indians. By protecting sites of traditional value, ensuring tribal access to the land, and often placing property directly under tribal stewardship, TPL helps native communities preserve their spiritual, cultural and economic relationship to the land.

Restoring a Land-Based Culture
Perhaps more than any other culture in the United States, Native Americans hold a special reverence for the land. Native communities continue to depend on the land for physical and spiritual sustenance. The land harbors foods and medicines, provide places and objects essential to practicing religious beliefs and contains native history, stories and ancestral remains. The diversity of the landscape created unique imprints on individual tribal identity casting differences in cultural languages and customs that exist to this day. Yet the history of the American Indian has largely involved loss of land on a catastrophic scale. The 1887 Dawes Act alone was responsible for the loss of more than 90 million acres of Indian land, almost two-thirds of the tribal land base.

The attrition of the Indian land base continues to this day. Rarely does a week pass without a newspaper report of looting of Indian gravesites on private lands, the development of vacation homes on historic fishing grounds, or the loss of wildlife habitat on traditional hunting lands to subdivisions or timber harvesting.

Acquisition
Occasionally litigation can halt these activities, but usually only temporarily. Acquisition, however, with ultimate ownership by tribal or other government agencies (with mandates to manage for tribal values) can permanently prevent destruction activities such as residential development, ensure tribal access, and apply the protection of federal laws to graves and other important sites.

The Trust for Public Land--through its legal and real estate expertise, access to financial capital, and relationships with many of the private owners of traditional Indian Lands--has negotiated difficult transactions to protect thousands of acres important to Native Americans. In the Northwest alone, TPL has acquired twenty such properties totaling over 32,000 acres and valued at over $27 million. Other projects recently protected or under negotiation will benefit tribes including the Nez Perce, Umatilla, Warm Springs, Yakama and Klamath. TPL does more than simply protect land, however.
Public Funding
Funds TPL has accessed for tribal lands include the federal Land and Water Conservation fund; mitigation funds provided by private utilities and power authorities; in-lieu funds from Army Corps of Engineer appropriations; and funding from obscure Department of Agriculture programs. TPL leads the nonprofit community in creatively seeking out new sources of funding that can be devoted to the restoration of tribal lands.

Public Focus
By placing key properties under option, and thereby establishing a deadline for action beyond which the property (and opportunity) will be lost, TPL also brings a sense of urgency and focus to agencies whose mitigation programs, for example, have been marked more by inertia than accomplishments. Optioned projects also give tribes and the general public specific properties around which to rally support.

Intangible Benefits
The purchase and protection of tribal lands also bring less tangible, but equally important, benefits. For example, the widespread publicity from TPL’s Hetewisniix Wetes (Precious Land) project with the Nez Perce inspired a community-wide discussion in nearby Enterprise, Oregon that resulted in the removal of an offensive Indian caricature from athletic uniforms. In addition, a scholarship fund (now at $17,000) was created for the education of Nez Perce children in wildlife management.

TPL is committed to meeting the land conservation and cultural heritage preservation objectives of American Indians. Because of Native Americans’ traditional land-based culture, to save the land is to build communities, with outcomes that are socially, economically, and environmentally just.

The Trust for Public Land
TPL is a private, nonprofit conservation group that works nationwide to conserve land for people. Founded in 1972, TPL specializes in conservation real estate, applying its expertise in negotiation, public finance, and law to protect land for public use. Working with private landowners, communities, and government agencies, TPL has helped protect more than 1.2 million acres nationwide for people to enjoy as parks, playgrounds, community gardens, recreation areas, historic landmarks, and wilderness lands.

TPL’s Tribal Lands Program is guided and supported by a Tribal Lands Advisory Council composed of Indian Leaders, joined by other Americans committed to the protection and restoration of tribal lands and culture. For more information or help in protecting tribal lands, call Alvin Warren, director of the Tribal Lands Program at 503-988-5922, or by e-mail at Alvin.Warren@tpl.org. Visit our web site at www.tpl.org.
FACT SHEET

POTENTIAL TAX SAVINGS

This fact sheet is a general summary of issues surrounding tax deductibility of conservation easements. Potential easement donors should always consult with a qualified tax professional.

Income Tax

Donation of a conservation easement, although a gift of a partial interest in real property, is eligible for a federal tax deduction if:

1. it is of a qualified real property interest (i.e. a restriction in perpetuity on the use of real property;
2. it is to a qualified organization; and
3. it is exclusively for conservation purposes (one of the five categories).

An income tax deduction is the most common deduction sought by donors of conservation easements. Some facts about income tax deductibility:

- The easement must be donated or sold for less than fair market value.
- It must be granted in perpetuity.
- It must be to a qualified conservation organization.
- It must be granted exclusively for conservation purposes.
- The amount claimed for a deduction generally equals the reduction in the property’s value due to the easement.
- The appraisal that determines the easement’s value must meet IRS standards.
- There are limits on the percentage of adjusted gross income that can be deducted for charitable expenses.

Estate Tax

Property is valued at its “highest and best use” for the purposes of determining estate taxes. By recording a perpetual conservation easement over his or her property, a property owner limits the potential uses for that property. By thus precluding uses that could drive up the value of the land, the landowners avoids the pitfall of a highest and best use valuation that could force the sale or development of the land to pay estate taxes.
This consideration can be particularly relevant to "land-rich but cash-poor" agricultural landowners who wish to keep their land in agriculture after their death.

Property Tax

While in theory the reduction in value of the property should qualify it for a reduction in property taxes, in practice this is rarely the case. Especially in California, where Proposition 13 has reduced property tax burdens for those properties that have not changed hands since the Prop 13 initiative, reassessment of the property could increase the assessed value, the conservation easement notwithstanding. Ultimately, the decision on potential property tax savings rests with the county assessor, and a favorable decision will require persistence on the part of the donor.

Appraisals

Conservation easements appraisals are conducted similarly to all other appraisals of real property, with one variation. Appraisals of conservation easements are based on sales comparisons, summation of component values, or expected income, except that two appraisals are conducted. The first determines the value of the property without the conservation easement, the second the value with the easement. The loss in value of the property between the first and second appraisal is the value of the easement rights.
An act to add Chapter 1.76 (commencing with Section 5097.995) to Division 5 of the Public Resources Code, relating to historical resources.

LEGISLATIVE COUNSEL'S DIGEST

SB 1816, Chesbro. Historical resources: Native American sacred sites: violations.

(1) Existing law prohibits a public agency, or a private party using or occupying public property, or operating on public property, under a public license, permit, grant, lease, or contract made on or after July 1, 1977, from in any manner interfering with the free expression or exercise of Native American religion as provided in the United States Constitution and the California Constitution, or from causing severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity so require.

This bill would establish the Native American Historic Resource Protection Act, which would provide that any person who unlawfully and maliciously excavates upon, removes, destroys, injures, or defaces a Native American historic, cultural, or sacred site that is listed or may be
listed in the California Register of Historic Resources, including any historic or prehistoric ruins, burial ground, any archaeological or historical site, any inscriptions made by Native Americans at the site, any archaeological or historic Native American rock art, or any archaeological or historic feature is guilty of a misdemeanor if the act was committed with the specific intent to vandalize, deface, destroy, steal, convert, possess, collect, or sell a Native American art object, inscription, or feature, or site and the act occurs on public land or, if on private land, is committed by a person other than the landowner, as described. The bill would subject a person found guilty of the violation to imprisonment in the county jail for up to one year, by a fine not to exceed $10,000, or by both that fine and imprisonment.

By creating a new crime, the bill would impose a state-mandated local program. The bill would also subject a person found guilty of a violation of those provisions to a civil penalty in an amount not to exceed $50,000 per violation. The bill would require that all civil penalties collected pursuant to this provision as a result of an enforcement action brought by a city or county be distributed to the city or county treasurer of the city or county that brought the action. The bill would require the moneys to be utilized first to repair or restore the damaged site and would require the remaining moneys to be available to the city or county to offset enforcement costs.

The bill would require all civil penalties collected as a result of an action by the Attorney General to be first distributed to, and utilized by, the Native American Heritage Commission to repair or restore the damaged site. The bill would require the remaining moneys to be available to the Attorney General to offset enforcement costs.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.
THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Native American burial sites and Native American cultural resources have always been, and will continue to be, considered sacred to California Native Americans.

(b) California Native American sacred cultural resources and burial sites have been continuously looted and destroyed by grave robbers and people wanting to sell sacred and cultural artifacts.

(c) California Native American sacred sites are nonrenewable and need additional protection.

(d) California Native American tribes have demonstrated ancestral affiliation to Native American burial sites and historical and cultural resources.

(e) The United States Government and many western states, including California, have realized the need for protection of Native American burial sites and cultural resources and have enacted laws to reflect this awareness with more stringent legal enforcement and penalties for desecration of Native American sacred sites.

(f) Legislation is needed to provide the additional legal protection for Native American burial and cultural sites, art, and other cultural artifacts found at those sites.

(g) Legislation is needed to provide additional legal protection for Native American historical and cultural sites, art, and other cultural artifacts found at those sites, if that protection for Native American cultural resources found on private lands is consistent with constitutionally protected property rights of the persons who own the land on which they are found.

(h) Consistent with Sections 5020.7 and 5097.94 of the Public Resources Code, in order to encourage collaborative relationships for the protection of Native American cultural resources between Native Americans and landowners, funding and other state assistance should be encouraged for support of voluntary agreements to conserve, maintain, and provide physical access for Native Americans to these cultural resources.

SEC. 2. Chapter 1.76 (commencing with Section 5097.995) is added to Division 5 of the Public Resources Code, to read:
CHAPTER 1.76. NATIVE AMERICAN HISTORIC RESOURCE PROTECTION ACT

5097.995. (a) (1) Any person who unlawfully and maliciously excavates upon, removes, destroys, injures, or defaces a Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources pursuant to Section 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site, any inscriptions made by Native Americans at such a site, any archaeological or historic Native American rock art, or any archaeological or historic feature of a Native American historic, cultural, or sacred site is guilty of a misdemeanor if the act was committed with specific intent to vandalize, deface, destroy, steal, convert, possess, collect, or sell a Native American historic, cultural, or sacred artifact, art object, inscription, or feature, or site and the act was committed as follows:

(A) On public land.

(B) On private land, by a person, other than the landowner, as described in subdivision (b).

(2) A violation of this section is punishable by imprisonment in the county jail for up to one year, by a fine not to exceed ten thousand dollars ($10,000), or by both that fine and imprisonment.

(b) This section does not apply to any of the following:

(1) Any act taken in accordance with, or pursuant to, an agreement entered into pursuant to subdivision (1) of Section 5097.94.

(2) Any action taken pursuant to Section 5097.98.

(3) Any act taken in accordance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(4) Any act taken in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

(5) Any act authorized under the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4).

(6) Any action taken with respect to a conservation easement in accordance with Chapter 4 (commencing with Section 815) of Division 2 of the Civil Code, or any similar nonperpetual enforceable restriction that has as its purpose the conservation, maintenance, or provision of physical access of Native Americans to one or more Native American historic, cultural, or sacred sites, or pursuant
to a contractual agreement for that purpose to which most likely descendents of historic Native American inhabitants are signatories.

(7) Any otherwise lawful act undertaken by the owner, or an employee or authorized agent of the owner acting at the direction of the owner, of land on which artifacts, sites, or other Native American resources covered by this section are found, including, but not limited to, farming, ranching, forestry, improvements, investigations into the characteristics of the property conducted in a manner that minimizes adverse impacts unnecessary to that purpose, and the sale, lease, exchange, or financing of real property.

(8) Research conducted under the auspices of an accredited postsecondary educational institution or other legitimate research institution on public land in accordance with applicable permitting requirements or on private land in accordance with otherwise applicable law.

5097.996. (a) Each person who violates subdivision (a) of Section 5097.995 is subject to a civil penalty not to exceed fifty thousand dollars ($50,000) per violation.

(b) A civil penalty may be imposed for each separate violation of subdivision (a) in addition to any other civil penalty imposed for a separate violation of any other provision of law.

(c) In determining the amount of any civil penalty imposed pursuant to this section, the court shall take into account the extent of the damage to the resource. In making the determination of damage, the court may consider the commercial or archaeological value of the resource involved and the cost to restore and repair the resource.

(d) A civil action may be brought pursuant to this section by the district attorney, the city attorney, or the Attorney General, or by the Attorney General upon a complaint by the Native American Heritage Commission.

(e) (1) All moneys collected from civil penalties imposed pursuant to this section as a result of an enforcement action brought by a city or county shall be distributed to the city or county treasurer of the city or county that brought the action. These moneys shall be first utilized to repair or restore the damaged site, and the remaining moneys shall be available to that city or county to offset costs incurred in enforcing this chapter.

(2) All moneys collected from civil penalties imposed pursuant to this section as a result of an enforcement action brought by the Attorney General shall be first
distributed to, and utilized by, the Native American Heritage Commission to repair or restore the damaged site, and the remaining moneys shall be available to the Attorney General to offset costs incurred in enforcing this chapter.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.
EXECUTIVE ORDER 13175

CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:
(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:
(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions.

Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes...
on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:
   (1) encourage Indian tribes to develop their own policies to achieve program objectives;
   (2) where possible, defer to Indian tribes to establish standards; and
   (3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. Consultation. (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.

Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:
   (1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or
   (2) the agency, prior to the formal promulgation of the regulation,
(A) consulted with tribal officials early in the process of developing the proposed regulation;

(B) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,

(1) consulted with tribal officials early in the process of developing the proposed regulation;

(2) in a separately identified portion of the preamble to the regulation as it is to be issued in the Federal Register, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and

(3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.

(d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.

Sec. 6. Increasing Flexibility for Indian Tribal Waivers.
(a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.

(b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.

(c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefore.
(d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.

Sec. 7. Accountability.
(a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.

(b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. General Provisions. (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. Judicial Review. This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

WILLIAM J. CLINTON
THE WHITE HOUSE, November 6, 2000.
Guidelines for Conducting Tribal Consultation

BLM Manual Handbook H-8120-1

U.S. Department of the Interior Bureau of Land Management
Table of Contents

Chapter I. Introduction .......................................................... I-1
   A. Purpose and Goal of this Handbook
   B. This Handbook's Place in the BLM Manual System
   C. What is Consultation?

Chapter II. Consulting under Cultural Resource Authorities .......... II-1
   A. National Historic Preservation Act
   B. Archaeological Resources Protection Act
   C. Native American Graves Protection and Repatriation Act

Chapter III. Consulting under General Authorities ...................... III-1
   A. Federal Land Policy and Management Act
   B. National Environmental Policy Act
   C. American Indian Religious Freedom Act
   D. Executive Order No. 13007, "Indian Sacred Sites"

Chapter IV. Considerations That Apply to Various Authorities .......... IV-1
   A. Public Land Resources Are Not Trust Assets
   B. The Nature of BLM's Tribal Consultation under Cultural Resource Authorities
   C. Cultural Resource Project Plans
   D. No Compensation Given for Consultation Per Se
   E. Data Security and Confidentiality
   F. Whom to Consult under Cultural Resource and General Authorities (Summary)

Chapter V. How to Consult ..................................................... V-1
   A. General Features of Consultation
   B. Identifying Consultation Partners
   C. When in the Decision Making Process to Start Consultation
   D. Preparing for Consultation
   E. Initiating Native American Contacts
   F. Legally Required Notification
   G. Legally Required Consultation
   H. Correspondence Content
   I. Documentation of Notification and Consultation
   J. How Much Consultation to Do
   K. Use of Information Gained Through Consultation
   L. Conclusion of Consultation
Appendix 1. Policy on Compensation ....................................................... App. 1-1

Text Figures

Chapter II.

Fig. 1. Provisions of Section 101(d)(6) of the National Historic Preservation Act.
Fig. 2. Tribal consultation for purposes of Section 106 of the National Historic Preservation Act.
Fig. 3. Provisions of Section 4 of the Archaeological Resources Protection Act.
Fig. 4. Tribal consultation for purposes of Section 4(c) of the Archaeological Resources Protection Act.
Fig. 5. Provisions of Section 3(c) and (d) of the Native American Graves Protection and Repatriation Act.
Fig. 6. Tribal consultation for purposes of Section 3(c) and (d) of the Native American Graves Protection and Repatriation Act.

Chapter III.

Fig. 7. Provisions of Title II of the Federal Land Policy and Management Act.
Fig. 8. Tribal consultation for purposes of Title II of the Federal Land Policy and Management Act.
Fig. 9. Provisions of Section 102 of the National Environmental Policy Act.
Fig. 10. Tribal consultation for purposes of Section 102 of the National Environmental Policy Act.
Fig. 11. Provisions of the American Indian Religious Freedom Act.
Fig. 12. Tribal consultation for purposes of Section 2 of the American Indian Religious Freedom Act.
Fig. 13. Provisions of Executive Order No. 13007.
Fig. 14. Tribal consultation for purposes of E.O. No. 13007, "Indian Sacred Sites."

Chapter IV.

Fig. 15. Whom to consult depends on the particular legal authority.

BLM Manual
Supersedes Rel. 8-65
CHAPTER I. Introduction

A. Purpose and Goal of this Handbook. This Handbook replaces H-8160-1 (Rel. 8-65; 11/3/94), "General Procedural Guidance for Native American Consultation." Compared to the replaced edition, this Handbook narrows the span of coverage to focus mainly on the "cultural resource" laws, executive orders, and regulations. It also covers new authorities and policies, as does the new Manual Section 8120, "Tribal Consultation under Cultural Resource Authorities." As before, the Handbook's overall purpose is to assist BLM managers and staff members in carrying out their assigned tribal consultation responsibilities and roles. Its goal is to help assure (1) that federally recognized tribal governments and Native American individuals, whose traditional uses of public land might be affected by a proposed BLM action, will have sufficient opportunity to contribute to the decision, and (2) that the decision maker will give tribal concerns proper consideration. The difference is that the new Manual Section and Handbook, unlike the earlier versions, do not endeavor to cover all aspects of BLM-tribal relations under the full range of legal authorities.

B. This Handbook's Place in the BLM Manual System.


2. 1600- and 1700-Series Manuals: As representatives of the United States Government, BLM's line managers maintain ongoing relations with their tribal counterparts and assure adequate and timely tribal involvement in BLM decisions. These are executive rather than technical-program duties. Accordingly, the subject of tribal relations should appropriately be covered in the BLM's broad administrative Manual series, particularly in the Manual Sections and Handbooks dealing with the planning and environmental assessment phases of decision making. Until tribal consultation sections are incorporated in those Manual series, managers and their supporting staffs may use this Handbook for general guidance.
C. What is Consultation?

Consultation has 4 essential elements:

- Identifying appropriate tribal governing bodies and individuals from whom to seek input.
- Conferring with appropriate tribal officials and/or individuals and asking for their views regarding land use proposals or other pending BLM actions that might affect traditional tribal activities, practices, or beliefs relating to particular locations on public lands.
- Treating tribal information as a necessary factor in defining the range of acceptable public-land management options.
- Creating and maintaining a permanent record to show how tribal information was obtained and used in the BLM's decisionmaking process.

Who is a tribe? This Handbook frequently uses the terms "Indian tribe" and "tribe" without expanding on the meaning. Either term can be understood to mean a federally recognized tribal government, whether in the Lower 48 or Alaska, whether the people would call themselves American Indians or Alaska Natives. Recognized tribes are self-governing entities that enjoy a government-to-government relationship with the United States. For further definition, see Manual Section 8120.08 and glossary. For the definitive list, see BIA's more or less annual Federal Register listing and occasional Federal Register updates. (Note: At this writing the BIA Web site is closed. When it returns to the Web, it should again publish an up-to-date, Web-accessible list. Meanwhile, several non-BIA Web sites have similar lists that can be used for general information but should not be considered authoritative.)

The U.S. Government's representative. Just as it is important to determine who is empowered to speak for the tribe and to ensure that the BLM is consulting with the appropriate individuals, the BLM owes the tribes the same courtesy. Except when discussions are at the preliminary staff-to-staff stage, the BLM's representative must be authorized to speak for the BLM and must be adequately knowledgeable about the matter at hand. Generally speaking, this will be the appropriate line manager.
CHAPTER II. Consulting under Cultural Resource Authorities

"Cultural resource authorities" means the laws and executive orders listed and described in Manual Section 8120.03. Some of these are implemented by regulations listed in Manual Section 8120.05. This chapter characterizes the authorities that most often require cultural resource specialists to consult with tribes. The next chapter, Chapter III, characterizes general authorities — not cultural resource authorities — two of which (Federal Land Policy and Management Act and National Environmental Policy Act) often provide the procedural and scheduling framework for cultural resource-related consultation.

A. National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires Federal agencies to identify and consider potential effects that their undertakings might have on significant historic properties. Specific provisions to consult with Indian tribes during Section 106 compliance were added to the Act through amendments in 1992 (See Manual Section 8100 Appendix 5, Section 101(d)(6)).

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**Fig. 1. Provisions of Section 101(d)(6) of the National Historic Preservation Act.**

- Specifies that the traditional or historical importance an Indian tribe attaches to a particular place may make the place eligible* for the National Register of Historic Places (i.e., an "historic property" that is significant for purposes of the Act); and

- Directs agencies carrying out Section 106 compliance to consult with any Indian tribe whose tradition or history may contribute to the National Register eligibility* of a potentially affected property.

* National Register eligibility is determined by evaluating a candidate property’s characteristics against the National Register criteria in 36 CFR 60.4. See BLM Manual Section 8110. No property type enjoys categorical eligibility.
BLM-specific Section 106 compliance procedures. The BLM Director, the Chairman of the Advisory Council on Historic Preservation (Council), and the President of the National Conference of State Historic Preservation Officers approved a national Programmatic Agreement (PA) in 1997 (see Manual Section 8100, Appendix 13, or Manual Section 8140, Appendix 1). The PA authorizes BLM to comply with Section 106 by following its own cultural resource program policies and procedures as found in the BLM 8100-Series Manual Sections and Manual Handbooks. As part of implementing the PA, individual BLM State Directors and SHPOs have executed State-specific protocols that guide how they interact, exchange information, and complement one another's capabilities. The principles of the national PA and BLM-SHPO protocols, and the procedural details in the BLM Manuals and Handbooks replace the Council's regulations (36 CFR Part 800) and associated Council guidance for routine compliance activities. For more complex cases, the Council and SHPO may be asked to assist. (In Eastern States, where BLM holdings are few, no protocols are in effect and compliance follows the provisions of 36 CFR Part 800.)

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<th>BLM consults with—</th>
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| Tribal representative(s) whom the tribal government has designated for this purpose | • To identify tribally significant religious or cultural properties that may be eligible for the National Register of Historic Places  
• To understand tribal concerns sufficiently to take into account the effects that a proposed Federal undertaking might have on eligible properties |

Fig. 2. Tribal consultation for purposes of Section 106 of the National Historic Preservation Act.

Traditional Cultural Properties and Eligibility. Eligibility for the National Register of Historic Places is a professional determination based on application of the National Register criteria (36 CFR 60.4). Only those places that fulfill one or more of the National Register criteria may be found eligible. No type of property is automatically, categorically eligible, including traditional cultural properties. All candidate National Register-eligible properties must be evaluated against the criteria. Those that do not meet the eligibility standard are not subject to compliance with Section 106 of the National Historic Preservation Act. This does not mean that they are without protection, only that the NHPA is not the correct legal tool for protecting them.
Planning. The best time to foresee and forestall potential conflicts between BLM-authorized land uses and tribally significant historic properties is during land use planning and its associated environmental impact review. Planning and environmental review procedures are good ways to elicit information from tribes concerning "traditional cultural properties" (TCPs) and other places with "traditional or historic importance" pursuant to NHPA Sec. 101(d)(6). (See Ch. III.)

Tribal preservation concerns should be identified in spatial and programmatic terms, to address in general the locales and the types of land use activities that would and would not be of further tribal concern. Obtaining sufficient information at this early stage should serve to reduce later project-level consultation. Agreements on criteria and procedures for consulting with tribes about individual land use actions may be discussed at this time.

"Indian tribe" is specified in the Act. Section 101(d)(1) states the purpose "to assist Indian tribes in preserving their particular historic properties." Section 101(d)(6) directs agencies to weigh National Register eligibility for properties important to an Indian tribe, and to consult with the Indian tribe over properties found eligible.

"(A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register. "(B) In carrying out its responsibilities under section 106 of this Act, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A)" National Historic Preservation Act Sec. 101(d)(6)

The Act is silent on consultation with non-recognized Indian groups and non-recognized Alaska Native entities regarding properties of religious and cultural importance and Section 106.

Consolidating consultation efforts. Under Sec. 101(d)(6)(B) and Sec. 110(E)(ii), tribal consultation may be called for when data recovery is being considered to mitigate adverse effects on a property's scientific importance, if the property also has ascribed religious and cultural significance. Where appropriate, such consultation opportunities may be used to meet the separate consultation requirements of 43 CFR 7.7 and Sec. 3(c) of NAGPRA (see II.B. and C.), as well as those of Sec. 101 and Sec. 110 of NHPA.

However, care must be taken to keep the several Acts' distinct legal purposes separate, so that they do not become blended and confused in the various participants' minds. Losing focus on individual laws' requirements, participants specified, and reasons for obtaining the Native American input can result in omissions, mistakes, inappropriate expectations on the Native Americans' part, and inadvertent noncompliance on the BLM's part.
B. Archaeological Resources Protection Act.

The Archaeological Resources Protection Act (ARPA), Sec. 4(c), requires the responsible Federal land manager to notify the appropriate Indian tribe before approving a Cultural Resource Use Permit (see Manual Section 8150) for the excavation or collection of archaeological resources (see 43 CFR 7.3), if the Federal land manager determines that a location with cultural or religious importance to the tribe may be harmed or destroyed by the permitted activity.

- Requires the Federal land manager, before issuing a permit to excavate or remove archaeological resources from public land, to notify* the affected Indian tribe when a location having cultural or religious importance to the tribe may be harmed or destroyed by the permitted activity.

- Requires Federal land managers to include in the permit any terms and conditions deemed necessary to carry out the purposes of the Act. Sec. 10 links ARPA’s implementation and the purposes of the American Indian Religious Freedom Act.

* Uniform regulations at 43 CFR 7.7 recognize that notification logically leads to consultation if the tribe so requests, and require that any terms and conditions agreed to through consultation will be included in the permit.

**Fig. 3.** Provisions of Section 4 of the Archaeological Resources Protection Act.

Section 4(c). The exact wording of Section 4(c) of ARPA is as follows (emphasis added):

"If a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, as determined by the Federal land manager, before issuing such permit, the Federal land manager shall notify any Indian tribe which may consider the site as having religious or cultural importance. Such notice shall not be deemed a disclosure to the public for purposes of Section 9."

(16 U.S.C. 470cc(c))

The statutory term site in the phrase "religious or cultural site" should not be expected to mean the same as the word "site" in the discipline of archaeology, and should instead be understood to refer to a place or a location, whether archaeological in nature or not. The ARPA regulations provide, for example, that a "Federal land manager may enter into agreement with any Indian tribe . . . for determining locations for which such tribe . . . wishes to receive notice under this section" (43 CFR 7.7(b)(3), emphasis added).
A site "having religious or cultural importance" is probably at least as likely to occur in the absence of archaeological resources as in their presence. If the Federal land manager were to notify tribes only with respect to archaeological resources, a location's religious or cultural importance could go unheeded, and inadvertent harm or destruction could occur.

"Having religious or cultural importance" is an American Indian Religious Freedom Act (AIRFA) concept, not an archaeological resource one. The phrase came into the 1979 ARPA bill after a hearing where testimony was given by advocates for Indian religious freedom and traditional religious practitioners, shortly after the American Indian Religious Freedom Act of 1978 became law. The language in Section 10(a) of ARPA, requiring the rule makers to consider AIRFA when drafting uniform implementing regulations, was included in the ARPA bill at the same time. It reads, "Such rules and regulations may be promulgated only after consideration of the provisions of the American Indian Religious Freedom Act (92 Stat.469; 42 U.S.C. 1996)." The purpose of AIRFA is to ensure access to religious sites and freedom to worship through ceremonials and traditional rites, unhindered by Federal infringement, restriction, or intrusion. (See III.C.)

Therefore, when implementing Section 4(c), the focus of notification and consultation should not be just the archaeological resources that are the subject of a permit application. Rather, we should be considering the location, nature, scale, and timing of permitted activities that would occur under the permit – e.g., presence of work crews; surface disturbance – relative to places on the landscape that members of an Indian tribe are known, through consultation, to regard as important for their traditional cultural and religious observances.

Would permitted activities in the area, at the time proposed, hinder or intrude on legally (AIRFA) protected religious use? If the Federal land manager is confident, based on previous consultation, that permitted activities would not hinder such use, there would be no reason to notify an Indian tribe before processing an ARPA permit application.

Would permitted activities in a specific place, including an archaeological site, raise cultural concerns? For example, a ruin that an applicant has selected for excavation might be recognized in cultural tradition as a venerable ancestral home; or an archaeological site might contain features that are always considered important for cultural or religious reasons. Those kinds of concerns should influence the BLM decision about issuing a permit for excavating and/or removing archaeological resources.

Also, a tribe might have concerns about the potential for disturbing human remains and funerary objects. This would be subject to consultation under NAGPRA (see II.C.).
### Consultation for ARPA 4(c) purposes

<table>
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<tr>
<th>BLM consults with—</th>
<th>Purpose of consultation is—</th>
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<tbody>
<tr>
<td>Tribal representative(s) whom the tribal government has designated for this purpose</td>
<td>• To consider tribal religious or cultural locations on public lands, which archaeological activities, if permitted, could harm or destroy&lt;br&gt;• To consider protective terms and conditions that could be put into a permit to protect tribal religious or cultural locations from harm or destruction</td>
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</table>

**FIG. 4.** Tribal consultation for purposes of Section 4(c) of the Archaeological Resources Protection Act.

**Notifying tribes of potential harm or destruction.** The Federal land manager determines, based on information obtained from Indian tribes, whether proposed archaeological activities on public lands (such as specific instances of testing or excavation) could harm or destroy places of tribal religious or cultural importance, such as places where members of a tribe conduct cultural activities and religious observances. Because of their nature, scale, or timing, most archaeological proposals have little potential to permanently harm or destroy such places and will not warrant notification.

**Non-tribal groups may be notified.** The uniform regulations implementing ARPA provide that the Federal land manager may also give notice to any other Native American group known to consider potentially affected locations as being of religious or cultural importance (43 CFR 7.7(a)(2)). Input from non-tribal groups is in the nature of public participation, not government-to-government consultation.

**Document unsuccessful efforts.** If all efforts to notify and consult with the appropriate Indian tribe(s) prove unsuccessful, the permit application may be processed without further delay. In all cases, documentation of efforts to notify and consult must be included in the permit file. This documentation will serve as evidence of notification and consultation efforts in accord with 43 CFR 7.7.
Consultation procedures. If the tribe's response to the notification is a request for further information or consultation, then consultation should be expeditiously undertaken consistent with the procedural requirements and timeframes contained in 43 CFR 7.7(a)(3), Manual Section 8150, and Chapter IV of this Handbook.

When permit-related consultation will be taking place, it should be appropriate in most cases to use that opportunity to consult prospectively with regard to NAGPRA (see II.C.), to develop procedures to be followed in case human remains and cultural items are discovered.

Decision and documentation. Following consultation, the Federal land manager determines the nature, location, and timing of the field excavation and analysis methods that will be authorized in a permit. When decisions about field work and laboratory analyses do not conform with the requests of Indian tribes, the manager should always document the reasons in the permit file and notify the tribes of the outcome and its basis.
C. Native American Graves Protection and Repatriation Act.

BLM managers are required to consult with tribes under the Native American Graves Protection and Repatriation Act (NAGPRA) to determine affiliation and disposition of the specific kinds of "cultural items" defined in the Act: Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony.

- Require the responsible Federal agency to consult with the affected Indian tribe before issuing a permit to excavate or remove Indian human remains and associated funerary objects from public land.
- Require the responsible Federal agency to safeguard Indian human remains and/or funerary objects discovered during an authorized land use, and to halt the land use for as much as 30 days. *

* Regulations at 43 CFR 10.4(d)(iv) and .5(b) direct the responsible Federal agency official to consult according to procedures set out in the regulations.

**FIG. 5. Provisions of Section 3(c) and (d) of the Native American Graves Protection and Repatriation Act.**

1. Intentional removal of human remains and/or funerary objects. A Cultural Resource Use Permit (see Manual Section 8150) or equivalent documentation is required before human remains and artifacts covered by NAGPRA may be intentionally excavated or removed from Federal lands (see section B). The responsible manager must consult with appropriate Indian tribes or individuals prior to authorizing the intentional removal of Native American human remains and funerary objects found with them. This consultation should follow procedures in 43 CFR 10.3, Appendix 1 of this Manual Handbook, and Manual Section 8150. Documentation to show that required consultation has occurred must be included in the decision record, including the responsible manager's choice of field excavation and analysis methods. The Native Americans consulted are notified of the outcome and basis for the recovery plan.
2. Human remains and/or funerary objects discovered during land use. The BLM's policy is to leave burial sites and their contents undisturbed whenever possible.

When human remains and/or funerary objects subject to NAGPRA, are discovered as a result of a BLM or BLM-authorized activity, such as construction or other land-disturbing actions, they are to be handled in the manner described in the "inadvertent discovery" procedures found at 43 CFR 10.4 and the general procedures of this Manual Section, and the procedures for applicable State laws. Managers should coordinate these and other responsibilities for "inadvertent discovery" under NAGPRA with those under the NHPA, as described in Manual Section 8140.28.

"Inadvertent discovery" procedures in 43 CFR 10 include ceasing activity in the area of the discovery and protecting the NAGPRA materials. The Field Office is required to identify and consult with any lineal descendant or culturally related tribe (or, if no descendant or culturally related tribe is identified, with a tribe for whom the area of the discovery falls within boundaries of their aboriginal land, as determined by a final judgment of the Indian Claims Commission or the U.S. Court of Claims). Consultation should focus on the BLM's plan of action and final disposition of the discovered materials, and must be documented.

If the materials are to be excavated and removed from the public lands, pursuant to the provisions of Section 3(c) of the Act, the Field Office manager follows the provisions in Chapter II.C.1, including publication of a newspaper notice pursuant to 43 CFR 10.6, identifying the tribe that has been determined to be affiliated and to whom ownership of the materials would accrue following their removal. If, in consultation with the descendents or tribes, the Field Office manager determines that excavation and removal from the public lands is not required, the materials remain in the Federal Government's ownership and control.

Where there is a reasonable probability of encountering undetected human remains and associated funerary objects during a proposed land use, discussions with tribes before the project is authorized can provide the manager with general guidance on treatment of any cultural items that might be exposed. During discussions, the manager should explore the possibility of developing agreements on how to respond in advance, to save time and avoid confusion.

3. Reburial of NAGPRA items on public lands is not authorized. Due to the substantial and extensive legal, logistical, and practical problems that would ensue if human remains and other "cultural items" repatriated or transferred to lineal descendants or tribes were to be reburied on public land, the Bureau's policy is:

The BLM's managers shall not directly or indirectly authorize or permit the reburial of repatriated, removed, or transferred human remains and/or other NAGPRA materials, on public lands.
This policy does not apply to NAGPRA materials that have not been removed from the immediate vicinity of their original location following an inadvertent discovery. It also does not apply to portions of burials that were mistakenly removed in the interests of State health and safety laws (e.g., a hiker takes a skull found eroded from a stream bank to the coroner), or that were taken illegally and have been recovered through law enforcement investigations. In these cases, if the original burial location is known and the location is stable and not currently subject to conflicting uses, and if the affiliated tribe has been consulted and has entered into written agreement, the missing portion of the burial may be reunited with the in situ remainder. The BLM must make it clear to all parties that such restoration of a missing portion of an in situ burial does not affect the Federal Government's ownership or control of the restored burial, nor does it diminish the Bureau's ability to protect the restored burial under Federal law.

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<tr>
<th>Consultation for NAGPRA purposes</th>
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<td><strong>BLM consults with—</strong></td>
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<td>Lineal descendants, if known, or tribal representative(s) whom the tribal government has designated for this purpose</td>
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**FIG. 6.** Tribal consultation for purposes of Section 3(c) and (d) of the Native American Graves Protection and Repatriation Act.
CHAPTER III. Consulting under General Authorities

"General authorities," for purposes of this Handbook, means laws, executive orders, and regulations that are not considered "cultural resource authorities" like those discussed in the preceding chapter. The Federal Land Policy and Management Act (FLPMA) guides all BLM programs, and the National Environmental Policy Act (NEPA) pertains to the entire human environment. The planning and environmental review systems supporting FLPMA and NEPA often provide the procedural and scheduling framework for cultural resource-related consultation. Finally, the American Indian Religious Freedom Act (AIRFA) and the Indian Sacred Sites order (Executive Order 13007) sound as if they might be cultural resource authorities, but they are much more fundamental than that, pertaining to the free exercise clause of the First Amendment.


The BLM's land use planning process under FLPMA has opportunities for tribes to identify places associated with traditional values, traditional cultural properties, and sacred sites prior to a specific action or proposed land use. The land use planning process is the primary mechanism for complying with the American Indian Religious Freedom Act (AIRFA) and Executive Order 13007. Tribal concerns with regard to places of traditional cultural or religious importance are most effectively identified and accommodated over the extended period of time afforded by the land use planning process and associated environmental review.
In developing Resource Management Plans (RMP) and plan amendments, BLM managers are required to involve others, including Indian tribes, at five specific points: (1) identification of issues; (2) review of proposed planning criteria; (3) review of the draft Resource Management Plan and Environmental Impact Statement (RMP/EIS); (4) review of the final RMP/EIS; and (5) notice of any changes as a result of protests.

Broad information, regarding the general nature of traditional values and the general location of culturally significant traditional places, should be elicited in early planning stages. Going into consultation with knowledge about a group's historic relationship with the land and resources should enable managers to direct their questions in a sensitive and effective way.

Although consultation at the land use planning level should seek as much information as tribes are willing to share with BLM, tribes often withhold specific information unless or until there is a direct threat to traditional values and culturally significant places. Before making project-specific decisions, managers may need to provide additional opportunities for Native Americans to identify their specific concerns at the land use action level.
### Consultation for FLPMA purposes

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<th>BLM consults with--</th>
<th>Purpose of consultation is--</th>
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<tr>
<td>Tribal representative(s) whom the tribal government has designated for this purpose</td>
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</table>
  - To request tribal assistance in identifying and inventorying public land places, resources, uses, and values that are important to the tribe and/or tribal members and should be considered in land use plans  
  - To coordinate BLM and tribal land use policies and programs, and to seek consistency between land use plans, guidelines, and rules and regulations affecting public land and tribal land |

**Fig. 8. Tribal consultation for purposes of Title II of the Federal Land Policy and Management Act.**

The BLM is obligated in Sec. 202(c)(9) to coordinate all aspects of planning with Indian tribes, to ensure consistency between BLM's and the tribes' land use plans, to the extent consistent with the laws governing the administration of the public lands.
B. National Environmental Policy Act

The purposes of tribal consultation under the National Environmental Policy Act (NEPA) are to identify potential conflicts that would otherwise not be known to the BLM, and to seek alternatives that would avoid, reduce, or resolve the conflicts.

Indian tribes are not specifically mentioned in the Act, but tribal involvement is specified in the CEQ regulations at 40 CFR §§ 1501.2, 1501.7, 1502.16, 1503.1, 1506.6, and 1508.5. Agencies are advised in § 1501.2 to consult early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations, and in § 1501.7, to invite any affected Indian tribe to participate in scoping.


Tribes must be consulted whenever other governmental entities or the public are formally involved in the BLM's environmental review process (see Manual Handbook H-1790-1). This means that tribes must be consulted for Environmental Impact Statements (EISs), major Environmental Assessments (EAs), or other NEPA documentation that entails public involvement or initial discussions with local or state governments.
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<th>BLM consults with—</th>
<th>Purpose of consultation is—</th>
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| Tribal representative(s) whom the tribal government has designated for this purpose | • To identify a proposed action's potential to conflict with tribal members' uses of the environment for cultural, religious, and economic purposes  
• To seek alternatives that would resolve the potential conflicts |

**Fig. 10.** Tribal consultation for purposes of Section 102 of the National Environmental Policy Act.
C. American Indian Religious Freedom Act

The American Indian Religious Freedom Act (AIRFA) was a joint resolution of the two chambers of the Congress. The President adopted the resolution and signed it into law. Because it started out as a statement of the sense of the Congress, AIRFA is mainly a policy instrument. Section 1 reminds Federal agencies that Native Americans enjoy the same Constitutional guarantees under the First Amendment, as do all other people. Section 2 provides that the President will determine whether agency-specific laws and procedures conflict with the policy and need congressional action. The President's determination was made in a report to the Congress 1 year after AIRFA's 1978 enactment.

Case law has established that AIRFA has an ongoing implementation requirement, obligating agencies to consult with tribal officials and tribal religious leaders when agency actions would abridge the tribe's religious freedom by (a) denying access to sacred sites required in their religion; (b) prohibiting the use and possession of sacred objects necessary to the exercise of religious rites and ceremonies; or (c) intruding upon or interfering with ceremonies.

Resolves that it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise their traditional religions, including—

- access to sacred sites, including cemeteries, required in their religion;
- use and possession of sacred objects necessary to the exercise of religious rites and ceremonies; and
- freedom to worship through ceremonials and traditional rites without government intrusion or interference.

**FIG. 11. Provisions of the American Indian Religious Freedom Act.**

The BLM's corresponding policy is to avoid infringing on Native Americans' religious rights. Land use allocations, proposed BLM actions and authorizations, and routine management practices that could substantially restrict access or interfere with free exercise must be examined in consultation with tribes.
BLM consults with—

| Tribal representative(s) and/or native traditional religious leaders whom the tribal government has designated or identified for this purpose |
| Purpose of consultation is— |
| • To identify the potential for land management procedures to conflict with Native Americans' religious observances |
| • To seek alternatives that would resolve the potential conflicts |

**FIG. 12.** Tribal consultation for purposes of Section 2 of the American Indian Religious Freedom Act.

*Not strictly government-to-government.* The provisions of AIRFA are not limited to federally recognized Indian tribes. The constitutionally guaranteed freedom to follow the religion of one's choice extends to all Native Americans—as to others—without qualification. The BLM manager's best starting point for consultation purposes, however, is through the government-to-government channels that structure most of BLM's official relations with Indian tribes.

**D. Executive Order No. 13007, "Indian Sacred Sites"**

Executive Order No. 13007, May 24, 1996, directs Federal land managing agencies to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, and to avoid adversely affecting the physical integrity of such sacred sites, to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions.

The Order is very explicit about not creating new rights and not limiting duly authorized land uses. It is "not intended to, nor does it, create any right, benefit, trust responsibility, substantive or procedural, enforceable at law or equity by any party against the United States, its agencies, officers, or any person" (Sec. 4). Nothing in it is to be "construed to require a taking of vested property interests [nor] shall this order be construed to impair enforceable rights to use of Federal lands that have been granted to third parties through final agency action" (Sec. 3).
H-8120-1 - GUIDELINES FOR CONDUCTING TRIBAL CONSULTATION – (Public)

E.O. No. 13007, "Indian Sacred Sites"

- Directs Federal land managers to accommodate Indian religious practitioners' access to and ceremonial use of Indian sacred sites, and to avoid adversely affecting the physical integrity of such sites;

- Directs land managing agencies to implement procedures to carry out these accommodation and protection provisions, including reasonable notice of proposed actions or land use policies that may restrict future access to or ceremonial use of, or adversely affect physical integrity of, Indian sacred sites;

- Cites Executive memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments," as the model for communication procedures;

- Requires a report within 1 year on any statutory or administrative changes needed to meet the Order's directions, and on the procedures implemented or proposed to facilitate consultation with appropriate Indian tribes and religious leaders.

**FIG. 13. Provisions of Executive Order No. 13007.**

The Order required agencies to report to the President within 1 year addressing changes needed to accommodate access and use of Indian sacred sites on Federal lands, or changes needed to avoid adversely affecting the physical integrity of sacred sites. The Order also required agencies to address in their report the procedures implemented or proposed, "to facilitate consultation with appropriate Indian tribes and religious leaders and the expeditious resolution of disputes relating to agency action on Federal lands that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites."

The BLM reported that no statutory or administrative changes are needed, and provided copies of Manual Section 8160 (1990) and Manual Handbook H-8160-1 (1994) as its procedures for facilitating consultation.

BLM Manual
Supersedes Rel. 8-65
Rel. 8-75
12/03/04
**Consultation for E.O. 13007 purposes**

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<th>BLM consults with—</th>
<th>Purpose of consultation is—</th>
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| Tribal representative and/or appropriately authoritative representative of an Indian religion whom the tribal government has identified for this purpose | • To determine whether proposed land management actions would—  
  • accommodate Indian religious practitioners' access to and ceremonial use of Indian sacred sites on Federal lands; and/or  
  • avoid adversely affecting the physical integrity of Indian sacred sites on Federal lands.  
  • To seek alternatives that would resolve potential conflicts. |

**FIG. 14. Tribal consultation for purposes of E.O. No. 13007, "Indian Sacred Sites."**

**Identifying sacred sites.** Only tribal representatives have the knowledge needed to identify a tribe's sacred sites. A tribe may name an appropriately authoritative representative of an Indian religion to provide this information. Federal officials cannot know to accommodate access to and ceremonial use of Indian sacred sites, and to avoid adversely affecting them, unless the tribe identifies them. Identification can only occur by consultation.

**Overlap with "TCP's" and "religious or cultural sites."** In some cases it may not be possible to differentiate among "sacred sites," "properties of traditional religious and cultural importance" (sometimes called "TCP's") that may be eligible for the National Register of Historic Places, and "sites of religious or cultural importance" subject to ARPA notification.

The similarity among these is that tribal identification is necessary as the beginning point for compliance with the intent of the law or executive order. A difference is that the BLM must apply the criteria in 36 CFR 60.4 to determine the eligibility of a traditional cultural property identified by a tribe. Identification itself does not make a property eligible for the National Register.
CHAPTER IV. Considerations That Apply to Various Authorities

A. Public Land Resources Are Not Indian Trust Assets

"Indian trust assets" means lands, natural resources, money, or other assets held by the Federal Government in trust or restricted against alienation for Indian tribes and individual Indians (Secretarial Order No. 3215, April 28, 2000). Trust is a formal, legally defined, property-based relationship that depends on the existence of three elements: (1) a trust asset (lands, resources, money, etc.); (2) a beneficial owner (the Indian tribe or individual Indian allottee); and (3) a trustee (the Secretary of the Interior). Many things and ideas that are commonly represented in terms of "trust" obligations are not actually part of the Government's trust responsibility toward Indians.

Cultural resources on BLM administered lands are not Indian trust assets. Sacred sites on BLM administered lands are not Indian trust assets. Human remains and cultural items subject to NAGPRA are not Indian trust assets.

B. The Nature of BLM's Tribal Consultation under Cultural Resource Authorities.

Tribes often experience "consultation" as it is conducted by the Bureau of Indian Affairs, whose officials act as agents for the Trustee (the Secretary of the Interior) to assure protection of Indian-owned trust assets. This form of "consultation," confined to issues of land and resource use on Indian land, normally concludes with the outcome that the tribe or individual Indian landowner intended.

In contrast, BLM's tribal consultation under cultural resource authorities generally does not involve either Indian lands or trust assets, and consequently there is no ownership-based presumption that a tribe's input will compel a decision that fulfills the tribe's requests or resolves issues in the tribe's favor. The BLM manager must make an affirmative effort to consult, and must consider tribal input fairly; but decisions are based on multiple-use principles and a complex framework of legal responsibilities, not on property principles and the obligations of the trustee to the trust beneficiary.
If these distinct meanings of "consultation" are not understood and a BLM decision runs counter to a tribe's requests, the tribe might object that the BLM has not consulted properly. Therefore, a part of consultation must be to make clear to our consultation partners that the BLM is not acting as the Trustee's agent, that trust assets are not involved, and that public-land decision making must consider – but not necessarily conform with – the tribe's requests.

C. Cultural Resource Project Plans.

A tribe shall be consulted when cultural resource project plans are prepared involving resources related to that tribe's heritage. Such plans may be prepared when sites will be stabilized, repaired, or developed for public interpretation and visitation.

D. No Compensation Given for Consultation Per Se

As stated in the 8120 Manual, BLM does not compensate any entity, including Indian tribes, for consultation required by law, regulation, or other authorities, where the consultation is part of BLM administrative processes designed to protect the interests of the consulting entity.

Nothing prevents the BLM from contracting or paying for the services of qualified individuals, firms, or organizations, including tribes and Indian individuals, through BLM procurement procedures, to produce in-depth ethnographic reports, National Register nominations, or other specific products for proactive management uses that are not considered BLM administrative processes designed to protect tribal interests.

This topic is discussed in more detail in Appendix I.

E. Data Security and Confidentiality

The BLM is the sole Federal agency responsible for collecting cultural resource information for the lands it manages. It is also responsible for maintaining that information in a secure environment. This information is used to evaluate the significance of these resources and to develop appropriate protection measures in long-term land-use planning documents and in the environmental documentation supporting multiple use decisions. Access to this information is controlled by 43 CFR Part 7 implementing Section 9 of ARPA and Section 101(d)(6) and 304(a) of NHPA.
On a project-specific basis, tribes may access this information by executing an agreement with the BLM to facilitate sharing and maintaining information and records related to cultural resources in a manner consistent with ARPA.

Native Americans may be reluctant to share sensitive information regarding resource locations and values with agency officials. This is partly because agencies have been hindered, until recently, from effectively protecting Native American cultural information from public disclosure under the Freedom of Information Act.

**Disclosure of sensitive Native American information may be denied if it:**

- exists only in "working files" i.e., documents that are not formal products of the agency or official correspondence, such as raw ethnographic data or notes (except that if the information is used in making a decision, it must become part of the official decision record and therefore be subject to disclosure); or

- pertains to a property listed in or eligible for the National Register of Historic Places and disclosure would risk harm to the property, cause a significant invasion of privacy, or impede the use of a traditional religious site by practitioners; or

- pertains to an archaeological resource as defined in 43 CFR Part 7, and disclosure would risk harm to the resource.

Less tangible values, when they coincide in space with historic properties or archaeological resources, could also be protected from disclosure under these authorities. The confidentiality of information less firmly associated with a historic property or archaeological resource, however, is not resolved.

No blanket FOIA exemption exists for NAGPRA related information. Thus, potentially sensitive information such as the specific nature and location of materials subject to NAGPRA consideration, and the identity of descendants or culturally affiliated Indian tribes, may not be automatically withheld from FOIA disclosure. Consequently, the BLM State FOIA officer must evaluate any NAGPRA-related FOIA request, case-by-case, in close consultation with the NAGPRA coordinator and the responsible manager. While BLM managers should make every effort to safeguard sensitive information to the fullest degree possible, information may not be improperly withheld in the face of a lawful FOIA request.
Managers and staffs carrying out Native American consultation should clearly represent the sort of information they seek, the purposes to which the information will—and will not—be applied, and the limits of the BLM's ability to protect the information from public disclosure. The extent of that ability must not be misrepresented.

All sensitive data should be carefully maintained and securely stored. Offices responsible for gathering sensitive information and conducting consultation should have adequate physical and procedural means to ensure secure file maintenance and management.

F. Whom to Consult under Cultural Resource and General Authorities (Summary)

See Chapters II and III for discussion of the legal authorities, the requirements, and the purposes for consultation.

<table>
<thead>
<tr>
<th>Whom To Consult</th>
<th>NHPA</th>
<th>ARPA</th>
<th>NAGPRA</th>
<th>FLPPMA</th>
<th>NEPA</th>
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<th>EO13007</th>
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<td>Tribal representative whom the tribal government has designated for this purpose</td>
<td>X</td>
<td>X</td>
<td>X²</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Lineal descendant of Native American human remains with established identity</td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Traditional religious leader whom the tribal government has identified for this purpose</td>
<td></td>
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<td></td>
<td>X³</td>
</tr>
<tr>
<td>Appropriately authoritative representative of an Indian religion</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X³</td>
</tr>
</tbody>
</table>

FIG. 15. Whom to consult depends on the particular legal authority.

1 Lineal descendants (who need not be tribal members) have legal precedence.
2 If no lineal descendants are known, then the tribe is consulted.
3 A tribal government may designate a "traditional religious leader" or an "authoritative representative" as the tribe's representative for consultation under AIRFA or E.O. 13007.
CHAPTER V. How to Consult

A. General Features of Consultation

Consultation usually demands more effort than routine public participation. Tribal consultation means dialogue between a BLM manager and an American Indian or Alaska Native tribal government regarding proposed BLM actions, intended to secure meaningful tribal input and involvement in the decisionmaking process.

As both a precursor to and an ongoing part of consultation, BLM managers are encouraged to visit tribal councils and appropriate tribal leaders on a recurring basis. This face-to-face meeting irrespective of specific issues or proposed actions helps to develop relationships that can reduce the time and effort spent in later consultation on individual projects or actions. Managers are encouraged to take advantage of these meetings to discuss how and when and with whom follow-on consultation would occur with affected tribes and/or their designated representatives. Remember, this is government-to-government consultation and should be treated with appropriate respect and dignity of position. The manager's direct involvement can be key to building a solid working relationship and successful consultation.

When publishing notices and/or open letters to the public, indicating that the BLM is contemplating an action and that comments are welcome, managers should send individual letters, certified mail or delivery confirmed, to tribes requesting their input on actions being considered.

If a timely response is not received to such requests, the manager should follow up with personal telephone calls to tribal officials as part of government-to-government consultation. There may be a variety of reasons why a timely response to a letter is not provided. It is important in opening dialogue with tribal governments to at least initially follow up letters with telephone calls to assure that tribal officials understand the issue and that the BLM manager wants to consult in good faith.

Lack of response might be an issue of sensitive information. Particularly where places of religious importance are involved, tribes may be reluctant to provide specific information, perhaps because it is culturally impermissible to share such information outside the tribe, or because the appropriateness of BLM's use and protection of the information are not certain. Some of the hesitancy to provide specific information early in the planning and project review process may be overcome once an effective working relationship has been built.

On occasion, onsite visits or other face-to-face meetings may be requested by the tribes, or their designated representatives, or initiated by the BLM manager. A reasonable effort should be made to accommodate such requests in as timely a manner as possible.

BLM Manual
Supersedes Rel. 8-65
Rel. 8-75
12/03/04
For the benefit of both parties, managers are encouraged to strive for the most efficient and
effective method of consultation. Whatever method is chosen, all consultation activities
should be carefully documented in the official record.

**B. Identifying Consultation Partners**

Consultation requirements and procedures, including the identification of the appropriate
consultation partner, vary according to the legal basis for consultation and any agreements
the BLM has executed with tribes, and may require consultation with one or more of the
following:

- Officials of federally recognized tribal governments;
- Representatives of non-recognized Indian communities;
- Traditional cultural or religious leaders; and
- Lineal descendants of deceased Native American individuals
  whose remains are in Federal possession or control.

In some circumstances, others may be designated by tribes or individuals to act as
spokespersons.

Specific consultation should focus on groups known to have concerns about the geographic
area under consideration and the particular resources and/or land uses involved.

Although consultation partners may vary depending on which statute prompts a particular
consultation episode, courtesy and protocol require that tribal governments be notified and
given an opportunity to respond whenever the BLM intends to bring a tribal subunit or an
individual tribal member into a consultation relationship.

The BLM's consultation partners must be individuals who are authorized to speak for the
tribe or group relative to the matter at hand. The BLM may also need to consult with other
interested individuals whose participation is not "official" so far as the tribe or group is
concerned.

**Identifying tribes.** The Bureau of Indian Affairs (BIA) publishes an annual list of federally
recognized tribes in the *Federal Register*. This list is the best starting point for identifying
recognized tribes with which the United States has a government-to-government
relationship. This list is not exhaustive and must be augmented by other sources.

Tribes and groups with historic ties to the lands in question, including those that are no
longer locally resident, should be given the same opportunity as resident tribes and groups
to identify their selected contact persons and their issues and concerns regarding the public
lands.
In addition to the list of recognized tribes, Area Offices of the BIA produce a supplemental list of non-recognized Indian groups petitioning Federal recognition. The BIA's Area or Agency Offices should be contacted to obtain updated and additional information on tribal governments and other Native American organizations in the general vicinity. (See Manual Section 8120.04D and E.)

Each BLM office should develop and maintain lists of:

- The tribal officials and traditional religious leaders whom tribal governments have designated to serve as contacts for notification and consultation.
- Other Native American individuals and representatives of non-recognized groups identified as wanting to know about pending BLM actions.

**Identifying tribal contacts.** Initial inquiries should be addressed to the presiding government official of the Indian tribe, e.g., the Tribal Chairman. Initial discussions should attempt to determine which individual(s) will be officially authorized to serve as the point of contact and the representative/spokesperson for the tribe for each of the various matters relating to the BLM.

**Identifying traditional cultural and religious leaders.** Official representatives of the tribe or group should be the first source for identifying traditional cultural and religious leaders and other individuals with specialized knowledge. Names of persons known to be traditional cultural or religious leaders can sometimes be obtained from BIA Area or Agency Offices; other Federal, State, and local government agencies that provide programs and services to Native Americans; local Native American cultural organizations and Native American ombudsman organizations; ethnographers, ethnohistorians, and anthropologists in universities and professional organizations; and other sources.

**Identifying lineal descendants.** A determination of lineal descent must be based on evidence provided by the person claiming descent. Since the BLM cannot contact such persons directly until they have identified themselves, initial contact should be made through the larger unit of which they are members (tribes, communities, etc.) or through descent records of the appropriate BIA Agency Office. It is not possible to identify lineal descendants when the personal identity of the human remains is not known.
Consultation roles generally may not be transferred to others. Nonprofit organizations and public assistance agencies that provide services to Native Americans can sometimes facilitate communication with tribes, communities, traditional leaders, etc. (e.g., legal aid, family service, elders' health programs, regional associations). Native American community organizations and ombudsman organizations can also help to identify appropriate parties for consultation.

However, unless they are specifically authorized to do so, such organizations should not be considered to "represent" tribes or groups in an official sense. The BLM's contact with extra-tribal and public assistance groups is not a substitute for consultation with tribes or individuals, nor can these groups take the BLM's part in consultation.

The BLM's responsibility to notify and consult with Native Americans cannot be assigned or delegated to any other party.

Similarly, cultural resource consulting firms working for land use applicants, etc., might appropriately be approved to make contacts and collect information in some circumstances, such as to identify traditional cultural properties for purposes of Section 106 compliance; but they cannot negotiate, make commitments, or otherwise give the appearance of exercising the BLM's authority in consultations.

Summarizing information. Each office may wish to develop maps showing areas where tribes have identified issues or concerns. Maps can depict lands historically occupied or utilized, and can also locate areas identified as having ongoing traditional religious significance and use. However, when information of this extremely sensitive nature is included, maps must be treated as confidential working files and kept from public view. (See IV.E.)
H-8120-1 - GUIDELINES FOR CONDUCTING TRIBAL CONSULTATION – (Public)

C. When in the Decision Making Process to Start Consultation

One of a manager's earliest steps in the decision cycle, regardless of the scale of the decision, should be to determine whether the decision could have consequences for Native American issues or concerns. Of course, this entails an information-based judgment, so the degree of effort involved in making the determination will depend on how far along the unit is in gathering information and establishing relationships with Indian tribes and other Native American groups. The less of this that has been done, the more lead-time will be needed to make a good determination.

In any case where it appears likely that the nature and/or the location of an activity could affect Native American issues or concerns, the BLM manager should initiate appropriate consultation with potentially affected Native Americans, as soon as possible after the general outlines of the land use plan or the proposed land use decision can be described.

Owing to their status as self-governing entities, tribes should be notified and invited to participate at least as soon as (if not earlier than) the Governor, State agencies, local governments, and other Federal agencies.

More information to help guide the timing of consultation and the identification of consultation partners can be found in Chapters II and III of this Handbook.

D. Preparing for Consultation

The first step to prepare for consultation is to identify a clear purpose for consultation and identify with whom such consultation should take place. The second step is to review the record of what is already known about the relevant concerns of tribes that might want to have input into the BLM's activities. Recorded sources that should be reviewed include:

- previous correspondence with tribes;
- records of previous consultation;
- public participation records for land use plans;
- plan protest records;
- transcripts of public hearings;
- minutes of public meetings.

BLM Manual
Supersedes Rel. 8-65

Rel. 8-75
12/03/04
The BLM's and others' cultural resource records, including class I inventories and published and unpublished documentary sources, should be reviewed to identify any previously recorded areas and/or properties of traditional religious or cultural importance, and any traditional values that are closely associated with lands or resources which may be affected by BLM actions. Properties of traditional religious or cultural importance include, among other things, those "traditional cultural properties" that may be eligible for the National Register of Historic Places.

When existing records are being reviewed, special attention should be paid to places that Native Americans are likely to perceive as culturally sensitive in contemporary traditional cultural practice (human burial sites, shrines, prayer sites, rock art, natural features traditionally used for religious purposes, etc.).

**E. Initiating Native American Contacts**

After establishing a need and a purpose for consulting and determining with whom to consult, managers must make good faith efforts to elicit information and views directly from affected Native Americans.

An initial contact should be made with all potentially concerned tribal governments and other Native American groups, by letter and telephone, explaining the reason for the contact; requesting their direct participation and input in the decision making process; and asking them to identify any traditional cultural or religious leaders and practitioners who they think should also be contacted.

When a manager knows that tribal issues and concerns would be affected by a decision, tribes and groups that live near or use the lands in question should be contacted and given an opportunity to participate Tribes that reside elsewhere, but have known historic ties to the land, may have issues or concerns that could be affected by a decision. In cases where the manager can reasonably anticipate that such tribes would have issues and concerns with the effects of a proposed decision, these tribes should be contacted also.

For any Indian tribe that may be expected to have issues and concerns about a proposed decision, the initial point of contact should be the tribal chief executive, except in cases where another tribal official has already been designated as the BLM's contact.

Tribal government officials are the appropriate spokespersons where proposed actions might affect tribal issues and concerns. It is their responsibility to identify any tribal members who may have pertinent information concerning cultural and religious values or concerns.
If the BLM has established a consultation relationship with traditional leaders through previous contacts, these individuals should be contacted at the same time as tribal government officials are contacted. If there is no existing consultation relationship with traditional leaders, tribal government officials should be asked to identify individuals who might have special knowledge related to traditional uses of BLM lands.

F. Legally Required Notification

A specific legal requirement to notify Native Americans (e.g., pursuant to ARPA Sec. 4(c)) can generally be met through certified mail, return receipt requested, or delivery confirmation from a delivery service.

Where legally required notification is delivered through certified mail or delivery service, a return receipt or delivery confirmation is adequate demonstration that BLM has satisfied the notification requirement. With some tribes and individuals, however, a notice may not be deliverable for a variety of reasons. Obviously, a receipt or report showing that delivery was not made is clear indication that the BLM's requirement has not been met.

To avoid false starts and delays, BLM managers and staffs should select a notification strategy that has a high expectation of success.

G. Legally Required Consultation

Notification can be satisfied through simple one-way written means. Consultation is generally construed to mean direct, two-way communication.

While statute and case law do not provide the methods of communication needed to constitute legally required consultation, the legal standard is a "good faith effort." Two White House documents guide agencies in meeting this standard:

The Sacred Sites Executive Order, E.O. 13007 in Section 2(a), charges land managing agencies to "promptly implement procedures . . . to ensure reasonable notice is provided of proposed actions or land management policies that may restrict future access to or ceremonial use of, or adversely affect the physical integrity of, sacred sites. In all actions pursuant to this section, agencies shall comply with the Executive memorandum of April 29, 1994, 'Government-to-Government Relations with Native American Tribal Governments.'"

The referenced April 29, 1994, memorandum states: "(b) Each executive department and agency shall consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments. All such consultations are to be open and candid so that all interested parties may evaluate for themselves the potential impact of relevant proposals."

BLM Manual
Supersedes Rel. 8-65

Rel. 8-75
12/03/04
H. Correspondence Content

Whether correspondence is meant to serve as notification or as a written precursor or supplement to direct, person-to-person consultation, there are certain correspondence guidelines that apply in either case.

In general, correspondence should—

- identify the purpose of the letter (i.e., the action being proposed and the specific legal/regulatory basis for writing);
- identify a BLM contact person and how to reach him/her (if for consultation, note that a call or visit will follow);
- specifically request the kind of Native American input needed (such as identification of potential cultural concerns);
- provide an opportunity for a meeting; and
- solicit the names and addresses of other persons who should be notified or consulted.

Some additional clauses that might be appropriate under certain circumstances include:

- Referrals: "If you are not the appropriate individual to receive this request, please advise whom we should contact."

- Flexible meeting proposals: "If this time and location are not appropriate, please contact [_____] within [_____] days prior to the scheduled meeting to make alternative meeting arrangements."

- Documentation requests: "Please indicate on the enclosed map, if possible, areas of specific concern," or "Please provide or refer us to any available information that would help us to understand the significance and nature of traditional cultural concerns in the [area of proposed action] for the [proposed action] for the [group or tribe name]."

If a letter is returned as undeliverable, include the canceled, unopened letter in the official file and, if appropriate, begin more direct (and documented) attempts to carry out the notification or consultation.
I. Documentation of Notification and Consultation

Include notification and consultation documents in the permanent decision record.

Evidence of notification and consultation (or of the failure of diligent efforts) is to be included in the official file and provided to the authorized officer in support of a proposed decision. The names of preparers should appear on all notification and consultation materials. The consultation record must show that the decision maker made a good faith effort to obtain and weigh tribal input in decision making. If a decision does not conform with the tribe’s requests, the consultation record must explain the manager’s basis for reaching a different outcome.

Managers are to take an active role in consultation efforts and should accustom themselves to looking for evidence of notification or consultation (or unsuccessful good faith efforts) before making a decision. If no notification or consultation is needed, the staff person preparing the material for the manager should include a note to this effect.

Telephone contact. All attempts to establish telephone communication, and a record of all conversations conducted by telephone, should be documented by a signed and dated note to the files, to be included in the permanent record. Copies of relevant emails are to be included as well.

Meetings and direct consultation. The purpose of meetings and direct consultation is to elicit specific information to be integrated into the body of data submitted to the authorized officer as a basis for decision making.

Consultation and coordination meetings should be narrowly focused on the proposed BLM action, or the planning area involved, with the goal of developing: (1) a specific description of the places and/or values at issue; and (2) potential management options to avoid or minimize any negative consequences to Native American cultural and religious values and practices.
J. How Much Consultation to Do

There is no simple measure of sufficiency of Native American consultation efforts. On a case-by-case basis, unless there is a valid consultation agreement with the tribe, Field Managers should evaluate the amount of consultation necessary based on the:

- potential harm or disruption a proposed action could cause;
- alternatives that would reduce or eliminate potential harm or disruption;
- completeness and appropriateness of the list of Native American groups and individuals consulted;
- nature of the issues raised;
- intensity of concern expressed;
- legal requirements posed by treaties (if any);
- potential to resolve issues through further discussions; and
- need for further consultation.

All such judgments should be well documented to assure a complete record of the authorized officer's good faith efforts to identify, contact, consult, and respond to Native American cultural concerns before reaching a decision.

In general, enough information should be developed to document how decisions were reached when they may potentially affect Native American values associated with BLM-administered lands and resources. It is important to keep in mind that many, perhaps most, specific issues of Native American concern will not be issues associated with cultural resources such as archaeological sites. (Rather, Native American cultural concerns are likely to center on issues of access, collection and use of plants and animals, protection of religious places, and incompatible land and resource uses.)

A good way to gauge whether consultation efforts have been sufficient is to consider the degree to which an objective review of the decision record would find a good faith effort to identify, notify, involve, and respond to all Native Americans potentially affected by a proposed decision.
K. Use of Information Gained Through Consultation

The BLM manager must give tribal concerns and preferences due consideration and make a good faith effort to address them as an integral part of the decision making process. Final decisions may not always conform with the preferences and suggestions of the tribes. How tribal issues were addressed must be documented as part of the decision record (see I. in this chapter).

L. Conclusion of Consultation

In all cases, the tribes that have participated in consultation should be notified of the BLM's decision.

This notification should specifically include a discussion of the BLM's basis for its decision, relationship to the tribal concerns raised in consultation, and the avenues available for protest or appeal of the decision.

This correspondence should be sent certified mail or delivery service and a copy included in the permanent decision record.
Appendix 1: Policy on Compensation to Native Americans for Their Participation in the BLM's Administrative Process

Issue Summary:

Native American individuals and organizations sometimes ask the BLM for payment or other compensation in return for bringing Native American issues to the BLM's attention and providing the BLM with information on Native American interests and concerns that relate to the BLM's land use planning, environmental review, and other legal-regulatory administrative requirements.

Policy:

The BLM does not compensate individuals or organizations—including Native American individuals, Indian tribes, Indian communities, and Indian organizations—for contributing information or comments as input into the BLM's administrative process.

Background:

Purpose of input. In the regular course of business, the BLM frequently invites input from Indian tribal officials, members of Native American communities, and practitioners of traditional culture and religion, as well as from other potentially affected parties and members of the general population. The BLM requests this input to satisfy legal requirements aimed at ensuring balance of perspectives in protecting the greater public interest. The input that Native Americans choose to provide may benefit their particular interests relative to future BLM actions or decisions. As with other participants, Native Americans' contributions to the BLM administrative process are a form of voluntary participation.

Ambiguous terminology. Some misunderstanding seems to result from use of the term "consultation." As used in this context, the term means conducting a dialogue, exchanging information. A participant in this kind of consultation is not a "consultant" in the way that a contractor who provides technical services might be called a consultant. Accordingly, "consultants' fees" are never appropriate to this kind of consultation.
Basis for Consultation:

Legal Requirements. Requirements to notify and consult with Native Americans under specific circumstances are included in the Archaeological Resources Protection Act (P.L. 96-95), the Native American Graves Protection and Repatriation Act (P.L. 101-601), the National Historic Preservation Act (P.L. 89-665), and regulations implementing these laws. (See Chapter II.)

Native American coordination and consultation are also regularly conducted to address the more general requirements in the American Indian Religious Freedom Act (P.L. 95-341), the National Environmental Policy Act (P.L. 91-190), the Federal Land Policy and Management Act (P.L. 94-579), and pertinent regulations.

Component of Normal Administrative Process. Inviting Native Americans to identify and address issues of particular concern to them is a regular component of the BLM's administrative process. BLM Manual Section 8120 and Handbook H-8120-1 contain guidance for conducting Native American coordination and consultation. As expressed and expanded on in the Manual Section, the BLM's basic policy is to "consult with affected tribes to identify and consider their concerns in BLM land use planning and decision making, and [to] document all consultation efforts" (BLM Manual Section 8120.06E).

The Character of Consultation. Consultation consists of (a) identifying appropriate tribal governing bodies and individuals from whom to seek input; (b) conferring with appropriate tribal officials and/or individuals and asking for their views regarding land use proposals or other pending BLM actions that might affect traditional tribal activities, practices, or beliefs relating to particular locations on public lands; (c) treating tribal information as a necessary factor in defining the range of acceptable public-land management options; and (d) creating and maintaining a permanent record to show how tribal information was obtained and used in the BLM's decision making process." (BLM Handbook H-8120-1, I.C.).
The BLM Should Accommodate Participation:

Avoid creating attendance difficulties. It is neither feasible nor appropriate for the BLM to undertake the level of personal financial review set forth by the Comptroller General to determine if compensation would be appropriate every time consultation with Native Americans is required. Rather, the BLM should seek to avoid creating circumstances where compensation for expenses might be requested.

Attempt to accommodate participation whenever possible. For example, the BLM should routinely make efforts never to schedule public meetings on matters potentially affecting Native Americans in places where it would be difficult for potentially affected Native Americans to attend.

Broad Public Interest. A wide range of input is sought on the full spectrum of BLM land use planning, environmental review, and proposed actions. It is essential to the broad public interest that the BLM obtain full and substantive input as a basis for its decisions. It is also important for the BLM to minimize controversy based on a perception of partiality, or on an impression that opinions and information the BLM receives might be colored by the BLM's compensation to a participant.

The BLM May Contract for Services:

Reports or other specific products. Nothing prevents the BLM from contracting for the services of qualified Native American individuals, firms, or organizations, through the BLM acquisition and procurement procedures, to produce in-depth ethnographic reports or other specific products. Such services would not constitute "consultation" as used in the BLM 8120 Manual and this issue analysis.

The BLM manager must fully comply with all Federal procurement rules. Care must be exercised to prevent any expectations on the part of tribal officials, tribal elders, or individual tribal members that BLM will routinely pay for input from such parties. Where BLM's contract costs would be reimbursable, any form of payment to Indian tribes should be coordinated with any affected project applicants beforehand. The BLM does not request project applicants to contract directly with Native American individuals, firms, or organizations. All payment should be directed through the BLM using appropriate Federal procurement procedures.
The following four examples illustrate situations for which payment for services may be considered:

1. BLM requests assistance in documenting and evaluating a place used for traditional purposes. An Indian tribe has informed BLM of a specific place where its members have conducted traditional ceremonies for generations (i.e., a "traditional cultural property"). From the information provided by the tribe, BLM determines that the property meets the National Register criteria but requests assistance in more thoroughly documenting and evaluating the property in the field to meet broader responsibilities under the Federal Land Policy and Management Act. The tribe offers the expertise of a traditional practitioner who agrees to accompany BLM personnel to the property and assist in its documentation, but only if he is paid for his time and travel. In such a case, BLM payment for the services rendered by the traditional expert may be appropriate.

2. BLM requests assistance in analyzing or interpreting cultural materials. An archaeological site identified during a field inventory contains artifacts unfamiliar to the archaeologist. The archaeologist shows the artifacts to local Native Americans who recognize them as similar in appearance to objects they use in traditional activities. The Native Americans offer to explain the manner in which they use such objects if they are paid for this information. If BLM requests such information, payment may be appropriate.

3. BLM requests information about traditional practices. An interdisciplinary management plan is being developed for an area. In assessing current conditions, questions are raised about how long the current plant species composition has existed and how past land uses may have reduced or increased various species. The BLM decides to gather information to better understand how humans have changed the environment. Elders of the Indian tribe that historically occupied the area agree to share their knowledge of traditional agricultural and horticultural practices if they are paid for it. Payment for such information may be appropriate.

4. BLM requests tribal participation in preparing written reports or other products. An archaeological site is excavated. During consultations with a local Indian tribe prior to the excavation, BLM learns that the site figures prominently in the tribe's oral histories and determines that the tribe's perspective would be a valuable addition to the excavation report. The tribe is willing to assist in writing or providing information for the report if it is paid for doing so. If BLM asks the tribe to participate, payment to the tribe may be appropriate.
COVER IMAGES are adapted from “Indian Land Areas Judicially Established 1978,” by Frederick L. Briuer, Ph.D., and Gary A. Hebler, U.S. Army Engineer Waterways Experiment Station, U.S. Army Corps of Engineers, based on the similarly named U.S. Geological Survey map that “portrays results of cases before the U.S. Indian Claims Commission or the U.S. Court of Claims in which an American Indian tribe proved its original tribal occupancy of a tract within the continental United States.”
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May 2005
Washington, DC
TRIBAL CONSULTATION:
BEST PRACTICES IN HISTORIC PRESERVATION

NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS

May 2005
Washington, DC
The "Tribal Consultation: Best Practices in Historic Preservation" project was conceived by the National Association of Tribal Historic Preservation Officers (NATHPO), Advisory Council on Historic Preservation (ACHP) and National Park Service (NPS), because consultation between Agencies and Tribes is intrinsic to the Section 106 process of the National Historic Preservation Act and an understanding of the necessary components is critical. In order to provide the reader with some indications and effective methods of meaningful consultation, this project bypassed anecdotal experiences in favor of surveying a large body of Agencies and Tribes for their empirical experiences in consultations they deemed to be successful. Their voluntary responses -- compiled and analyzed in this study -- reveal that Agencies and Tribes, for the most part, have similar feelings about what constitutes consultation, how it should be conducted, and what constitutes successful consultation. They tell us that mutual respect must be the basis upon which successful consultation builds, and that coming to a final agreement is not as important as building ongoing channels of communication. Successful consultation begins early in the planning stages, and is predicated on each party being knowledgeable about the project and the priorities and desires of the other parties. Though not without cost, successful consultation results in better and lasting final agreements.
# TABLE OF CONTENTS

ABSTRACT

I. EXECUTIVE SUMMARY

II. INTRODUCTION
   History
   Project Goals

III. WHY CONSULTATION WITH TRIBES
   Legal Requirements of Consultation with Tribes
   Efficiencies Derived from Consultation with Tribes
   The Right Approach to Decision-Making and the Fiduciary Relationship

IV. WHAT IS CONSULTATION WITH TRIBES AND HOW DOES IT OCCUR
   Defining Consultation
   The Consultation Process
   Agency Protocols

V. METHODOLOGY: STUDY DESIGN AND IMPLEMENTATION
   Stage Two: Survey Distribution
   Stage Three: Survey Solicitation
   Stage Four: Posting and Analyzing the Data
   Stage Five: Boolean Assessment

VI. THE RESULTS OF THIS STUDY: WHAT MAKES CONSULTATION WITH TRIBES SUCCESSFUL
   Hypotheses To Be Tested
   A. Preparing for Consultation
   B. The Process of Consultation
   C. Defining Success
   D. The Formula for Successful Consultation
   Results
   A. Preparing for Consultation
   B. The Process of Consultation
   C. Defining Success
   The Formula for Success: Boolean Analysis
   Tribal Responses
   Agency Responses
Formula of Successful Consultation

VII. STUDY REVELATIONS: BEST PRACTICES THAT EMERGE

VIII. MODEL PROTOCOL STEPS

IX. CONCLUSION

APPENDIX

1. Online Resources
2. Survey Responses
3. Survey Form
I. EXECUTIVE SUMMARY

The Best Practices project was an endeavor of the National Association of Tribal Historic Preservation Offices (NATHPO) in collaboration with the Advisory Council on Historic Preservation (ACHP), and with funding from the National Park Service (NPS). The goal of the project was to identify a best practices model for consultation between Federal Agencies and Tribes on Section 106 consultation of the National Historic Preservation Act, implementing 43 C.F.R. Part 800.

The project surveyed the consultation experiences of actual participants. All Federal Preservation Officers and federally-recognized Tribes were contacted by the project and asked to identify successful consultations, the participants, and the aspects of the enterprise that they deemed led to a successful result. In addition, the respondents were queried on how they measured success. Participants were asked to identify events occurring after the 1992 amendments to the National Historic Preservation Act (NHPA), which enhanced the Tribal role in historic preservation and created the Tribal Historic Preservation Officer (THPO) program. The results of the survey were charted and analyzed in an effort to distill the characteristics of successful consultation and to offer a best practices model for successful consultation in the implementation of Section 106.

Two methods were used to analyze the data: hypothesis testing and Boolean analysis. Tribal Historic Preservation Officers (THPOs), State Historic Preservation Officers (SHPOs) and others primarily involved in historic preservation were interviewed prior to the survey in order to devise the questions for the survey and obtain baseline assumptions about consultation. The survey data was used to test the validity of those assumptions. Boolean analysis was also employed to discern the formula for a successful consultation. This analysis relied upon the frequency of reported criteria for consultation.
A best practices model for consultation between Federal Agencies and Tribes began to emerge.

Some assumptions about successful consultation were consistent with the survey data. For example, consultation must occur early in the project planning process, both sides must plan ahead for meetings and be informed of the project scope and effect prior to attempting consultation, the parties must engage in a dialogue predicated on mutual respect and understanding of the priorities of the other and the challenges that each face, having a THPO and an Agency Tribal Liaison involved in the process contributes to success, as does having adequate funding for Tribal parties to travel to meetings, and for Agency and Tribal participants to view the site together. On the other hand, reaching a Memorandum of Agreement (MOA) was rarely seen as the indicator of success. Both Tribes and Agencies agreed that building relationships is the goal of a successful consultation and that funds and time spent in consultation reap ongoing benefits and efficiencies for future projects. Although congenial personalities make consultation pleasant, the process is bigger than an individual interaction and can indeed be institutionalized and replicated over time.
II. INTRODUCTION

History

The National Association of Tribal Historic Preservation Officers (NATHPO) and the Advisory Council on Historic Preservation (ACHP) collaborated on a project to identify “Best Practices in Tribal Consultation.” They agreed to utilize the funds provided by the National Park Service (NPS) to conduct a study, using a survey as the main investigative tool. The goal was to determine the attributes of a successful consultation between Tribes and Federal Agencies\(^1\) in order to assist consulting parties achieve successful results by identifying and promoting meaningful consultation practices.

In January 2004, a Project Advisory Committee\(^2\) was formed. The survey instrument was developed and distributed to all Tribes and Federal Preservation Officers in April. The collection of data was closed on November 24, 2004.

Project Goals

The goal of the study is to use data to identify the attributes of a successful consultation between Tribes and Federal Agencies in the execution of their historic preservation activities. While a growing body of scholarship based on anecdotal experience recommending good consultation practices exists (see Appendix 1, Bibliography), this study was predicated on the idea that: empirical data derived from numerous consultations will yield essential information on the nature and characteristics of successful consultation practices; Agencies and Tribes can learn from these experiences; pioneers in the efforts to perfect consultation skills would see their efforts validated; and Tribes and Agencies that

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\(^1\)"The Council and the National Park Service are currently conducting a guidance project to assist agencies in identifying Indian tribes to be consulted." 65 Fed. Reg. 77702 (Dec 12, 2000)

\(^2\) Alice M. Baldrica (Nevada Deputy State Historic Preservation Officer), David G. Blick (Historic Preservation Officer, HUD), Dr. Melvin Brewster (Skull Valley Goshute THPO Program), Sarah T. Bridges (National Resources Cultural Resources Specialist, USDA NRCS), Dr. Allyson Brooks (Washington State Historic Preservation Officer), Dr. Alan S. Downer (NATHPO Chairman & Navajo Nation Tribal Historic Preservation Officer), Thomas Hales Eubanks, State of Louisiana Archaeologist, James Garrison (Arizona State Historic Preservation Officer & Chief of the Historic Preservation Section), giwégízhigookway Martin (Tribal Historic Preservation Officer, Lac Vieux Desert Band of Lake Superior Chippewa Indians), Alina McGeshick (Tribal Historic Preservation Officer Assistant, Lac Vieux Desert Band of Lake Superior Chippewa Indians), Dr. Richard Waldbauer (Assistant Director, Federal Preservation Institute, National Park Service), Sherry White (Cultural Preservation Officer, Stockbridge-Munsee Tribe), and Dr. Rosita Worl (President, Sealaska Heritage).
are regularly involved in decisions on the identification, evaluation, assessment and treatment of cultural properties must work together to achieve lasting agreements on preservation of these sites will benefit from presentation of these results.

This study provides concrete suggestions and protocols for consultation. We hope that, by using it, Tribes and Agencies will institutionalize procedures that foster open communication and engaged interaction in matters of mutual concern. As a result, agencies will not merely see consultation with Tribes on a government-to-government basis (see Section III. Why Consultation with Tribes) as an obligation but as an opportunity to seek a process that is efficient and conserves the time and financial resources of the parties, at the same time it achieves mutual goals.

In order to determine what survey information might lend itself to specific management action for successful consultation (see Appendix 3, Survey Form), Dr. Hutt interviewed members of the Project Advisory Committee, historic preservation professionals, as well as the staff of the ACHP. As a result, several questions emerged:

- Is there a correlation between the consultation process and a successful result?
- Where do Tribes and Agencies look for advice and support in conducting consultation?
- How do Agencies determine the Tribes to consult?
- Are some projects more-or-less problematic and more-or-less likely to be resolved in consultation efforts?
- Do Tribes and Agencies have protocols used in consultation?
- Can consultation be a success and the MOA still elusive?
- Do differing values exist between Tribes and Agency representatives and, if so, does this impact the success of consultation?
- To what extent is having Tribal staff dedicated to Section 106 work important to success in consultation?
- To what extent is consistency in the representatives to consultation from the Tribes and Agencies a factor in successful consultation?
- To what extent is the Tribal or Agency legal staff involved in the process and is their presence a contributing factor to success?
- Is there a correlation between increased hiring of Native American staff in Federal Agencies and success in consultation between Agencies and Tribes?
- How is success defined?
- What does success look like?

The survey questionnaire was designed to obtain information that answered the above questions. Based on responses, certain hypotheses about consultation could be tested. These hypotheses can be grouped into four topic areas: Preparing for
Consultation, the Process of Consultation, Defining Success, and the Formula for a Successful Consultation.

The interviews conducted prior to the study elicited some commonly held assumptions about consultation that, subsequently were validated or negated by this study. Some interviewees assumed:

- That consultation was dependent upon an empathetic and congenial Agency manager and that upon transfer of this individual to another duty location the positive relationship between the Agency and Tribes would be lost.
- That Tribes and Agencies held different expectations of results to be gained from consultation, that is, that Agencies expected an immediate MOA and Tribes desired a long-term plan for the resource.
- That many “consultations” were in fact merely opportunities for Agencies to inform Tribes of decisions that had been made, or that Agencies believed that consultation obligations could be met by sending a letter to Tribes inviting them to a “consultation” without first providing specific information about the proposed project upon which they could be prepared to comment.

The first assumption is addressed in the first set of surveys sent to all Tribes and Federal Preservation Officers. The second assumption is informed by comparing the responses of Tribes and Agencies and the third assumption is resolved by the distillation of the component attributes of successful consultation into a formula.

The surveys revealed the prevailing motivation for consultation. Tribes and Agencies seem to sense that there is a communication gap that must be bridged. Some speak of the “right thing to do,” and others of “legal mandates,” and still others of “good management planning.” The study results demonstrate a correlation between motivation and success.
III. WHY CONSULTATION WITH TRIBES

The history of United States Indian policy evidences an evolving, difficult and complex relationship. With tribes the fundamental basis of required consultation is recognition of Tribal sovereignty. Over the years, the federal government has refined the obligation of Federal Agencies to interact with Tribes on a government-to-government basis in a series of laws, amendments to existing laws, and executive orders, all of which direct Agencies to engage in consultation with Tribes. Today, the relationship of the federal government and federally-recognized Indian Tribes has evolved to the point where consultation on a government-to-government basis is not only the law, it is considered sound management policy and the right way for the United States to do business.

The following discussion of consultation with Tribes identifies the legal mandates of tribal consultation, the efficiencies to be derived from consultation and why consultation is regarded as the right approach to decision-making in undertakings that might affect sites of interest to Tribes. This policy assumes that consultation is meaningful, effective and conducted in good faith.

Legal Requirements of Consultation with Tribes

The legal obligation of Federal Agencies to consult with Tribes on a government-to-government basis begins in the Constitution, in Article I Section 8, also known as the Commerce Clause, where Congress is empowered to regulate commerce with foreign governments, between the states and with the Indian Tribes. In Federal Indian policy, it is unclear whether Tribes are more like foreign nations or like states, but clearly, the government of the United States has an obligation to consult with Tribes as sovereign nations on matters of interest and concern to Tribes. The constitutional mandate is expressed in statutes, executive orders and the policies of the several Federal Agencies that touch upon Tribal matters. In brief these are:

- NHPA requires consultation with Indian Tribes on places of traditional religious and cultural significance, in identifying and determining treatment modalities within the area of potential effect of an undertaking. Consultation is also required with Tribes that have assumed historic preservation duties as THPOs for sites on Tribal land and with Tribes on the mitigation of effects to

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Section 101(d)(6)(B) of the act requires the Agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

- National Environmental Policy Act (NEPA)\(^7\) is directed at the impacts to the human environment, which includes the social and cultural relationship of people to the physical environment. Under this law there is an obligation to consult with Tribes concerning impacts to sacred sites and on the mitigation of actions to sites of concern to Tribes that is not limited by the National Register eligibility criteria (36 C.F.R.60.4)

- Archaeological Resources Protection Act (ARPA)\(^8\) is a law directed at protecting “archaeological” sites for the important information that can be retrieved, but the law also requires Federal Agencies to notify Tribes of a permit for excavation on federal land that will include sites of religious or cultural importance to Tribes. On Indian lands, the federal Agency must have the permission of the Tribe to issue an ARPA permit. The federal government has an obligation to keep track of such items when excavated pursuant to a permit in the event that the “Indian owners” may want to retrieve them.\(^9\) All fines and civil penalties collected and all items seized from ARPA civil and criminal prosecutions arising from incidents on Indian lands must be remitted to the Tribe. The costs of reburial of human remains and funerary objects disrupted by looters will be added to the restitution sought from violators.

- Native American Graves Protection and Repatriation Act (NAGPRA)\(^10\) requires that a general summary of the collection be disseminated to all possibly interested Tribes to facilitate consultation which can lead to

\(^5\) The NHPA in section 101(d)(2) creates the Tribal Historic Preservation Officer Program, and reads: “A tribe may assume all or any part of the functions of a State Historic Preservation Officer with respect to Tribal lands.” In section 301(14) “tribal lands” are defined as: “(a) all lands within the exterior boundaries of any Indian reservation, and all (b) dependent Indian communities.” This definition of “tribal lands” excludes Alaskan Natives from having a Tribal Historic Preservation Officer program. (U.S. Department of Interior, Office of the Solicitor, Request for Opinion Regarding National Historic Preservation Act of 1966, as Amended, November 2002.)


\(^7\) 42 U.S.C. §§ 4321-4335 and 1979 regulations.

\(^8\) 16 U.S.C. § 470cc.

\(^9\) 43 C.F.R. § 7.8 (a)(7)(ii).

repatriation and to assist in the preparation of an itemized inventory of human remains and associated funerary items. On federal land, Agencies that do not consult with Tribes prior to exhumation of sites of importance to Tribes and develop an agreement for "Intentional Excavation," are punished by a mandatory 30 day cessation of work for each "Inadvertent Discovery," that is a find in the absence of a plan arrived at through consultation with the impacted Tribes. Consultation is also required to determine the means of transfer of repatriated items.

- Executive Order 12875 (1993) *Tribal Governance*, specifies that the federal government must consult with Indian Tribal governments on matters that significantly or uniquely affect Tribal government. By Executive Memorandum of April 29, 1994, the federal government must consult with federally-recognized Tribal governments prior to taking actions that will affect those Tribal governments (See below for the current administration’s Executive Memorandum on the Government-to-Government Relationship).

- Executive Order 12898 (1994) *Environmental Justice*, specifies that the federal Agency will consult with Tribal leaders on steps to be taken to insure that environmental justice requirements are applied to federally-recognized Tribes. This includes research to address issues of adverse environmental impact in areas of low-income and minority populations, which include Tribes generally and with regard to subsistence consumption of fish and wildlife, which pertain to Tribes exclusively.

- Executive Order 13007 (1996) *Sacred Sites*, applies on federal land and directs the Federal Agencies to accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners, as well as to avoid adversely affecting the physical integrity of such sacred sites. Although Federal Agencies must consult with Tribes to learn the existence of places, which require management decisions to be made, the directive requires Agencies to maintain the confidentiality of sacred sites where appropriate for their protection.\(^{\text{12}}\)

\(^{\text{11}}\) 43 C.F.R. § 10.5 Consultation, specific requirements.

\(^{\text{12}}\) The National Park Service relied on this Executive Order when it instituted a voluntary climbing ban on Devil's Tower during periods of ceremonial use by tribes which was upheld by the courts in *Bear Lodge Multiple Use Ass'n v. Babbitt*, 2 F. Supp. 2d 1448 (D. Wyo. 1998). More recently the Tenth Circuit Court of Appeals upheld the management plan of the NPS which restricts visitor access to Rainbow Bridge during times of ceremonial use by the Navajo and Hopi, in *Natural Bridge and Arch Society v. Alston*, 98 Fed. Appx. 711, 2004 WL 569888 (10th Cir. Mar. 23, 2004), affg 209 F.Supp. 2d 1207 (D.Utah 2002), retreating from the earlier decision in *Badoni v. Higginson*, 638 F.2d 172 (10th Cir. 1980), which declined to uphold a restriction of visitors to Rainbow Bridge during times of religious practice on the basis that to exclude others would foster religion and violate the First Amendment. It has often been argued that quiet enjoyment of a
Executive Order 13084 (1998) *Consultation and Coordination with Indian Tribal Governments*, reaffirms the unique government-to-government relationship between Agencies and Tribes. The Order makes it clear that the obligation is upon the federal government and not the Tribes to instigate and insure that consultation occurs on a timely basis. The consultation is defined as an activity to obtain meaningful and timely input from Tribes on matters that significantly or uniquely affect Tribal communities. In those instances where Tribal laws exist, the Federal Agencies are to defer to Tribes and waive Agency control. Further, rulemaking on matters of concern to Tribes should include consultation with Tribes, necessitating the development of consensual mechanisms to arrive at agreements. This Executive Order embodies the complete shift in the enfranchised status of Tribes in the post-1960 era of Tribal self-determination and sovereignty. (superceded by E.O. 13175)

Executive Order 13175 (2000) *Consultation with Indian Tribal Governments*, would seem redundant, but appeared necessary where Agencies were slow to develop Tribal consultation policies and the courts were slow to enfranchise Tribes. This Order firmly establishes the policy of the administrative branch of government as one that institutionalizes regular and meaningful consultation with Tribes in the development of federal policies affecting Tribes. It directs that Agencies respect treaty rights and grants wide discretion to Tribes in self-governance and the development of Tribal policy. Further, this Order directs each Agency to develop a consultation process.

Executive Memorandum, *Government-to-Government Relationship with Tribal Governments*, (September 2004), recognizes the unique legal and political relationship of Tribes, and reaffirms that each executive department and Agency fully respect the rights of self-government and self-determination in their working relationships with federally-recognized Tribal governments.

Federal Agency regulations and policies pertaining to consultation with Native Americans are noted briefly below (Note: Some policies are titled protocol, but contain a statement of policy rather than an operational protocol. Agency protocols for consultation are listed in Section IV):

- NPS Management Policies include the following:
  1. Regarding burials (5.3.4)
  2. Regarding cultural interpretation (7.5.5)
  3. Regarding cultural resources (5.2.1)
  4. Regarding ethnographic resources (5.3.5.3.1)

traditional place of cultural practice was guaranteed by the First Amendment, not limited by it and that thought seems to be the trend in the court decisions subsequent to this Executive Order.
5. Regarding game harvest regulations (4.4.3)
6. Regarding museum objects (5.3.5.5)
7. Regarding natural resource management (4.1.4)
8. Regarding Sacred Sites (5.3.5.3.2)

In general these policies state that the practices, traditions and beliefs of
Native Americans will be considered in any treatment and planning
decision of the NPS, and that Native Americans will be a meaningful
part of the information gathering process to ascertain knowledge of the
sites and concerns and desires of Native Americans.

• The Bureau of Indian Affairs (BIA), which is responsible for over 50 million
acres of land held in trust by the federal government on behalf of Tribes and
Alaskan Natives, has Guidelines for Integrated Resource Management
Planning in Indian Country (IRMP). The IRMP outlines an involved process
as a blueprint for consultation with Tribes on the management of cultural
resources on Tribal lands by the Tribe.

• United States Department of Agriculture (USDA) Forest Service has a draft
general consultation policy process (FSM 1563) which references the
regulations to which it applies.

• USDA Natural Resources Conservation Service (NRCS) executed a
nationwide Programmatic Agreement, May 2002, with the ACHP and the
National Conference of State Historic Preservation Officers, to institute a
policy of developing consultation agreements at the state level with individual
Tribal governments.

• Department of Defense (DoD) adopted a policy on American Indians and
Alaska Natives in 1998, which includes consultation with Tribes concerning
proposed military activities that could affect Tribal lands and resources,
including sacred sites, on and off military reservations.

• The Department of Transportation’s (DOT) Federal Highway Administration
(FHWA) has a Native American Coordination Program, which provides
guidance and technical assistance to Federally-recognized Tribes, and
information for state DOTs on working relationships with Tribes, including a
section with individual Tribal programmatic agreements.

• Department of Housing and Urban Development (HUD) has a Government-
to-Government Tribal Consultation Policy (2001) and American Indian and

• Department of Energy (DOE) has a Native American and Alaska Native
Tribal Government Policy (2000) and an Environmental Policy & Guidance,
which has a section on the American Indian Religious Freedom and Native
American Graves Protection and Repatriation Acts.

• Environmental Protection Agency (EPA) has a Policy for the Administration
of Environmental Programs on Indian Reservations (1984) and a

**Efficiencies Derived from Consultation with Tribes**

Agencies are required to consult throughout the planning process of an undertaking, beginning with identification and evaluation of property of religious and cultural significance to the Tribe. There are also sound business reasons to conduct early and comprehensive consultation with Tribes, even prior to those mandated in statute. Many Agencies generate management plans in five- to ten-year cycles. The inclusion of Tribes in such planning ensures that the plans will be realistic and comprehensive, and that the significant resources involved in planning will be invested in a truly lasting management document. There are tremendous efficiencies in project planning and implementation to be gained from early identification of resources important to Indian Tribes.

In terms of project planning, consultation with Tribes from the time of the first planning sessions promotes smooth project execution and makes work stoppages to conduct remedial consultation less likely to occur. Consultation during the Section 106 process to resolve the issue of disposition of Native American burials and other cultural items that might be discovered during the project means that the activity is constructively a “Planned Excavation,” for NAGPRA purposes and not subject to mandatory 30-day work stoppages for each “Inadvertent Discovery.”

Agency protocols for consultation that are, themselves, derived from tribal consultation help to build a continuum of communication between the Agency and the Tribes within the area of Agency management. Although Agencies are only required to consult with the Indian Tribe as to the inclusion of other consulting parties when the undertaking is on Tribal lands, consistency of contact leads to an open working relationship, with an economy of effort and a high likelihood of satisfaction with the final action for all parties. This does not mean that the consulting parties may begin to take each other for granted, but it does mean that the cadence of consultation can pick up when a foundation of trust and mutual respect has been established.

**The Right Approach to Decision-Making and the Fiduciary Relationship**

Agency officials often describe consultation as the “right thing to do,” but it is the nature of the government’s trust relationship that mandates consultation. This fiduciary relationship is deeply rooted in the land and resource cessions made by Tribes as part of treaties and treaty-like rights. As a result the Tribes and the
642
government understood that the federal government would safeguard the autonomy of Native nations, their assets, and their treaty reserved rights, as a common law trustee. This relationship often referred to as the "trust relationship," requires that where the federal government has asserted management and control of Native American assets, either through Federal Agencies or local or state agencies funded by the federal government, it has an obligation to use due care with the assets of the Tribal beneficial owners. In decision-making, that potentially affects cultural assets of Native Americans, on and off Indian Country\textsuperscript{13}, the government-to-government relationship requires at a minimum the input of Native Americans. Furthermore, Tribes are not merely another consulting party, they are the primary consulting party.

The understanding derived from consultation between Agencies and Tribes contributes to better information about project impacts on the landscape for all Native nations and Federal Agency fiduciaries. Better information, in turn, should produce sounder project planning. Consultation is thus not only legally mandated and efficient project planning, it is also the right course of conduct. However, there also exists disagreement over when meetings are consultation and when they are not.

\textsuperscript{13} "Indian Country" is defined in 18 C.F.R. 1151.
IV. WHAT IS CONSULTATION WITH TRIBES AND HOW DOES IT OCCUR

Defining Consultation

The Secretary of the Interior’s Standards and Guidelines offers the following definition for consultation:

Consultation means the process of seeking, discussing, and considering the views of others, and, where feasible, seeking agreement with them on how historic properties should be identified, considered, and managed.14

The courts have also defined consultation in a case involving the USDA Forest Service and the Pueblo of Sandia, and a historic property in Las Huertas Canyon, New Mexico.15 This case exemplifies the status of consultation between Agencies and Tribes at the beginning of the time period covered in this study and merits some elaboration.

In Pueblo of Sandia, the court held that the Agency must make a “reasonable effort” to consult with Tribes in order to take into account the effect of an undertaking on National Register eligible properties known to the Pueblo. The Forest Service had mailed a letter to the Pueblo asking for the specific locations of sites known to traditional cultural practitioners, to be mapped to a scale of 1:24,000 or better, together with information on the activities practiced, the specific dates, as well as documentation of the historic nature of the property. The Forest Service also attended meetings of the All Indian Pueblo Council and informed them of the plans for road construction through the canyon. At those meetings the Agency was informed that there were sites in the area of potential effect, but this information was not acted upon as it lacked the specificity required by the Agency. The court found that the information sought by the Agency exceeded the level of specificity required in order for the Agency to be knowledgeable about the areas of concern to the Pueblo, and take mitigating action. Further, the court noted that the occurrence of cultural practices in the area was well known, including the use of certain paths and sites within the canyon. The court held that, where there is a reasonable likelihood that traditional cultural properties are present in an area, the Agency is obliged to make a reasonable effort to identify those properties, and found that it had not done so in this case.

14 Secretary of Interior’s Standards and Guidelines for Federal Agency Historic Preservation Programs Pursuant to the National Historic Preservation Act, Federal Register 24 April 1998.
15 Pueblo of Sandia v. United States, 50 F.3d 856 (10th Cir. 1995).
A “good faith” effort to identify properties would have included consultation with the Pueblos beyond the initial letter and briefing.

It is important to note that the key elements of consultation identified by both the court in Pueblo of Sandia and the Secretary of the Interior’s Standards and Guidelines are direct interaction and an exchange of views. That an agreement is reached may be the desired result, but the essential attributes of consultation are found in respectful, direct communication. Pueblo of Sandia affirms the opinion of many respondents to this study, that a letter inviting consultation followed by a briefing given to Tribes by the Agency does not constitute consultation.

The Consultation Process

At a minimum, consultation begins with the Agency official reviewing all known information about sites within the area of potential effect of the project. That review must also identify Native American groups with a potential interest in the area, whether or not they are physically present in the area.

The Agency official has the obligation to make a “good faith effort” to identify the consulting parties early in the planning process and give them a “reasonable opportunity” to identify concerns about effects on historic properties, advise on identification and evaluation of such properties, including traditional cultural properties and “participate in the resolution of adverse effects.”

The NHPA regulations include as consulting parties:

1. The State Historic Preservation Officer (SHPO), and on Tribal land by request or agreement or when the Tribe does not have a 101(d)(2) Tribal Historic Preservation Officer (THPO). 16
2. The THPO in lieu of the SHPO for those Tribes having THPOs, or if none, then the Tribal representative in addition to the SHPO, on Tribal lands. 17
3. Any Indian Tribes or Native Hawaiian organizations that attach “religious and cultural significance to historic properties that may be affected by an undertaking,” “regardless of the location of the historic property.” 18
4. Representatives of local governments where local governments have jurisdiction on the land and in place of the Agency official by agreement. 19
5. The Agency official on federal land and where a permit, license, federal assistance or other approvals are authorized by the federal Agency. 20

16 36 C.F.R. § 800.2(c)(2)(ii)(A).
17 36 C.F.R. § 800.2(c)(1).
18 36 C.F.R. § 800.2(c)(2).
19 36 C.F.R. § 800.2(c)(2)(ii).
20 36 C.F.R. § 800.2(c)(3).
21 36 C.F.R. § 800.2(c)(4).
6. The public and others with a demonstrated interest in the project or their concern with the effects on historic properties.22

Consultation between the Agency and Tribe lasts until the parties resolve the adverse effects23 of an undertaking or until an impasse is reached and the Advisory Council is to comment upon termination of consultation.24 Consequently, consultation plays a role in the planning of the undertaking, determinations that are made regarding the nature of the undertaking and its potential effects,25 identification of properties of religious and cultural significance,26 decisions on whether additional consulting parties should be added,27 and decisions on mitigating adverse effects.28

Agency Protocols

Many Federal Agencies have a Native American policy that includes acknowledgement of the need to consult with Tribes, but not all of them have translated this policy into action. Also, sometimes they confuse consultation policy, as directed by Executive Order 13175, and consultation protocols. The ACHP has noted that, “For many agencies, there remains a significant problem with implementation.”29 The following Agency protocols for consultation with Tribes have either been finalized or are in the draft stage:

- USDA Forest Service has a draft for FSM 1500 – External Relations, which is a comprehensive blueprint for interaction with American Indian and Alaska Native Tribal Governments, developed by the USDA National Tribal Relations Program Implementation Team. The handbook covers consultation on regulations and policies, as well as, specific activities and sets forth requirements for consultation and an evaluation process.
- The FWHA Pennsylvania Division held an Intertribal Summit in September 2003, out of which came recommended protocols. These protocols acknowledge the cultural aspects of consultation and that understanding the communication practices of a consulting partner is simply a matter of respectful behavior.
- ACHP Consultation Protocols are embodied in the Action Plan on ACHP Native American Initiatives, October 2003. The ACHP has assumed that among its tasks is a responsibility to assist all participants in understanding Native American consultation requirements in the Section 106 process.

22 36 C.F.R. § 800.2(c)((5) & (d).
23 36 C.F.R. § 800.6(a).
24 36 C.F.R. § 800.7.
25 36 C.F.R. § 800.3(c)(1)(3).
26 36 C.F.R. § 800.4((b).
27 36 C.F.R. § 800.3(f).
28 36 C.F.R. § 800.5(a).
29 ACHP Action Plan, October 2003, p. 5.
ACHP’s “Policy Statement Regarding the Council’s Relationships with Indian Tribes (November 2000).

FCC has a Memorandum of Understanding (MOU) with the United South and Eastern Tribes (USET), which adopts voluntary "Best Practices" concerning protection of historic properties of religious and cultural significance to Tribes in the tower siting process, and has a draft Programmatic Agreement designed to streamline the NHPA review process for communication facilities.

HUD has an Office of Native American Programs (ONAP) that provides training and is undertaking to consult with Tribes and their housing entities, according to their Tribal consultation policy.

DoD has developed training materials and has been active in training personnel on consultation techniques. These trainings include American Indian trainers, Tribal historians and Tribal elders in presentations given to the attendees. DoD has also produced a monograph on consultation with Tribes on Sacred Sites.

Department of the Army has developed Army Alternate Procedures (AAP) for consultation with Indian Tribes and Native Hawaiian organizations. True to the purpose of consultation, Native Americans were included in many of the AAP formative meetings to ensure that their perspectives were effectively incorporated into the AAP.

Consult, consult, consult does not mean agree, agree, agree.
We began a dialogue that opened doors for future meetings.

Major Samuel House, Environmental Programs Executive, Army National Guard

Consultation was successful because an effort was made by all parties to be considered before anything took place. We worked from point A through the whole process together as a group.

Mr. Ernest L. Neeley, Jr., Mayor, HPO, Lac Vieux Desert Band of Lake Superior Chippewa

Area Trail Project
V. METHODOLOGY: STUDY DESIGN AND IMPLEMENTATION

This study was conducted in five (5) stages: (1) hypotheses development; (2) survey distribution; (3) survey solicitation; (4) posting and analyzing of the data; and (5) Boolean assessment. Hypotheses are the pre-study set of assumptions about consultation subject to question. The survey was the main investigative tool and was used to determine the attributes of a successful consultation between Tribes and Federal Agencies, as self-reported by Tribes and Agencies. The survey form reflected interviews with members of the Project Advisory Committee, staff of the ACHP and others involved in historic preservation, and sought to obtain information capable of identifying best practices in tribal consultation for Section 106 undertakings (as opposed to policy). Where the survey instrument was insufficient, or the responses did not provide sufficient information, a follow-up interview was conducted. The interview notes were then attached to the survey response form to maintain a record that reflects the notes as taken, and separate from the self-reported comments (the survey form is found in Appendix 3, Survey Form). The responses and data tables created are maintained by NATHPO.

The surveys were distributed in two phases. Phase One was the initial mailing to all Tribes and Federal Preservation Officers. Phase Two involved a request for response to a specific project presentation made to a consulting partner identified in the first mailing. All of the responses were charted and analyzed by posing hypothesis to the data. Finally, Boolean analysis was used to devise a formula for successful consultation.

Stage One: Hypotheses Development

The first step was to establish a preliminary set of questions, or "hypotheses," to be used later in the project. Hypotheses were developed by Dr. Hutt after interviewing the project advisors, ACHP staff, and others involved in historic preservation.

Stage Two: Survey Distribution

In January 2004, a Project Advisory Committee was formed, and in April the survey instrument was sent by NATHPO to all Tribes and Federal Preservation Officers (FPOs). In addition, requests were made to personal contacts in Tribes and Agencies to support the official request from NATHPO. President Kraus made requests for survey responses at seminars, consultations and other events she attended during this time period, and Dr. Hutt did the same at trainings and
conferences she attended, including: U.S. Department of Agriculture-Farm Services (USDAFS), Bureau of Land Management and Tribal training in Grand Junction, Colorado, and USDAFS and Tribal training on Indian Law in Grand Teton, both in May; Texas National Guard and Army training on the Native American Graves Protection and Repatriation Act and Indian Law in Austin, Texas, in June; and the American Culture Association, in a panel on the use of NHPA, ARPA and NAGPRA to assert Tribal cultural sovereignty, in San Antonio, Texas, in April. Information on the study and a survey form were posted on the NATHPO website in early April.

Sixty-six (66) phase one survey responses were received (Appendix 2, Survey Inventory) concerning sixty-one (61) projects. Thirteen (13) Tribes and twenty-four (24) Agencies submitted projects, twice the same project was submitted by two different entities (Tribe-Agency and Agency-Agency). The Army had four different divisions submit a project at this stage, and each is counted as an Agency response for this study. Supplemental information was solicited from parties submitting phase one surveys where the survey instrument or responses were deemed to be insufficient, or to obtain missing contact names and information on the consulting parties, for phase two of the study. Interview notes were attached to the survey response form so that the record would include both the notes as taken and the self-reported comments. Phase one closed on November 5, 2004.

Stage Three: Survey Solicitation

In an effort to learn the views of Tribes and Agencies on consultation, and determine the indicia of successful consultation, getting survey responses from different consulting partners for the same undertaking was critical. Tribes and Agencies supported the study with survey responses, but they did not always report similar consultation experiences when on the same undertaking. By directly soliciting responses from consulting partners of phase one survey respondents, the number of Tribes and Agencies providing input to this study during phase two was doubled.

Phase two survey solicitations commenced on September 1, 2004. Phase two consisted of obtaining survey responses from consulting partners that were listed in the stage one surveys. To obtain sets of survey responses the inventory was compiled for distribution to the Project Advisory Committee and others who could prompt Tribes and Agencies to submit responses. Direct solicitations were made by mail, telephone, email and personal contact to elicit responses. In addition, direct interviews were conducted over the telephone with the consulting partner when time permitted.
For phase two, consulting parties from thirty-three (33) Tribes and thirty-two (32) Agencies\textsuperscript{30} responded with information on the project they reported in phase one\textsuperscript{31}. Of the original sixty-one (61) projects submitted in phase one, there were forty-four (44) projects where at least one consulting partner responded in phase two and seventeen (17) projects where no consulting partners responded. Phase two of the study closed on November 24, 2004.

**Stage Four: Posting and Analyzing the Data**

The data received from the survey responses were recorded as three data sets: (1) Tribal responses; (2) Agency responses; and (3) Joined Sets of consulting partners compared from Tables 1 and 2.

For Tribal Responses and Agency Responses: Columns were arranged to record the presence or absence of a THPO, Tribal Liaison, Tribal Chair and Agency official. The number of sessions held was recorded and the nature of the session was noted as a formal planned consultation or informal contacts. The indicia of success and lessons learned were as reported by the respondent. Each entry had an additional section of notes, which included the methods used to determine the consulting partners.

<table>
<thead>
<tr>
<th>THPO</th>
<th>Tribal Leader</th>
<th>Agency Official / Contractor</th>
<th>Number of Sessions</th>
<th>Nature of Session (in/formal)</th>
<th>Indicia of Success</th>
<th>Format</th>
<th>Lessons learned</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes/No</td>
<td>Yes/No</td>
<td>Yes/No</td>
<td>----------------</td>
<td>-------------------------------</td>
<td>-------------------</td>
<td>--------</td>
<td>----------------</td>
</tr>
</tbody>
</table>

Table 3 follows the same data-recording format as used for Tables 1 and 2, but the responses were paired for Tribe and Agency responses to a single project on which consultation occurred.

Several hypotheses about consultation developed prior to the survey were tested against the data. In addition, the tables were also used to identify the factors for the Stage Five Boolean assessment.

**Stage Five: Boolean Assessment ("Truth Table")**

Boolean analysis is a management tool that seeks to identify the critical attributes of decision-making, and the presence or absence of those attributes in case studies. A Boolean analysis identifies factors, isolates those factors in case

\textsuperscript{30} Although the same situation occurred here as it did in stage one with multiple divisions or regions of the same Agency submitting.

\textsuperscript{31} Phase one surveys provide one or more phase two consulting partners. One survey listed thirty (30) consulting partners. Many of the phase one surveys had the same consulting partner listed, and at times, when a Tribe responded, it responded to more than one project.
studies, enters their presence or absence on a Boolean “data table,” and, distills the results in order to test whether a particular factor should appear on a Boolean “truth table,” of factors that taken together likely will yield a successful result. As attributes for each reported consultation experience are reduced to simple algebra (i.e., formulas), the various ways to achieve successful consultation emerge in the Boolean “Simplification Table.” In other words, Boolean analysis allows for various events to be compared and the essential common aspects of consultation to be identified. The data table lists all formulas by response. The “truth table” allows for a weighted analysis, as recurring formulas can be segregated from single, outlier responses. Ultimately, a single formula emerges to predict success. Where a number of outliers exist, they may be analyzed separately to determine how success was achieved absent the predominant success formula.

Boolean analysis complements the Stage Four analysis explained above, by providing another means to test hypotheses against the survey data. Not only does it seek to answer frequently asked questions about consultation as gathered by the researchers, it looks for attributes of consultation free of preexisting assumptions. Since the use of hypotheses for questions reflects the present culture’s understanding and presumptions, hypothesis testing only proves or disproves each assumption. It does not openly ask, “What else is there?” Boolean analysis, on the other hand, does not begin with any assumptions. It is predicated on the attributes of consultation frequently appearing in the data. Therefore, Boolean analysis allows researchers to extract guidance from the data about factors that may not have been initially contemplated and to more accurately predict actions that will lead to success in consultation.

Essentially, the purpose of a Boolean assessment is to isolate a formula that leads to a positive result, which in this case is a successful consultation. This project is ideal for such analysis as the survey only requested examples of positive results. To be able to give guidance to others who wish to replicate success, knowing the critical elements of success beforehand promotes efficiency and effectiveness. Boolean analysis exposes those critical elements.

In each consultation described by respondents to the study several attributes may be isolated and recorded on the Boolean data table. The critical nature of these factors to success may be tested by the presence or absence of the factors in the consultation experiences reported in the survey as being successful. More than one combination of factors may lead to success, however, and indispensable factors and inconsequential factors will be revealed. This is of importance in planning consultation events and prioritizing expenses.

Boolean analysis begins by distilling from the data factors whose presence is a reliable predictor successful consultation. Review of the surveys reporting successful consultation revealed repeated references to factors that can serve as
criteria for Boolean testing purposes. Once identified, each criterion is listed and assigned a letter. A letter is capitalized when the criteria is present or positive in a survey response, and is in lowercase when it is not present. In this study, the criteria and their assigned letters are:

| A = Presence of a THPO and/or an Agency Tribal Liaison |
| a = absence of either or both |
| B = Government-to-government level of consulting participants (presence of Tribal and Agency officials) |
| b = absence of either or both |
| C = Early consultation in the project planning stage |
| c = contacts occur late in the process |
| D = Information exchange prior to the consultation event(s) |
| d = no or minimal information exchange prior to contacts/meetings |
| E = Funds available for travel and to host meetings, or meeting sites on Tribal land |
| e = funding needed, but not a critical factor, events occur on tribal sites |
| F = Ability to come to consensus or final resolution in an agreement |
| f = final agreement is not an immediate product |

Below is an example of a Boolean “truth table,” and an explanation of how it would work in the study. The three examples are based on actual survey responses.

Example 1: The Tribe reports a successful consultation where the Tribe had a THPO (= A) and the Tribal chair, as well as the area head of the Agency participated in meetings (= B). The consultation took place in the early planning stages of the Agency proposed action (= C) and was proceeded by a document sent to the Tribe that explained the project, the reasons therefore, scope, effect on the resources and projected calendar (= D). The Agency funded five Tribal representatives for three days to a meeting near the project site (= E). No final agreement was reached (= f), although the concerns of the Tribe were voiced and additional meetings were planned. Absent Boolean criteria: Final resolution (= f)

Boolean equation: ABCDEF

Example 2: The Agency reports a successful consultation when the THPO (= A) and the Agency contractor (= b) meet early in the planning process (= C), at a site convenient to the Agency, but where travel for the Tribal delegation is paid for by the Agency (= E). Information about the project is sent to the Tribe a month in advance of the meeting (= D) and an agreement is reached (= F) on mitigation of impacts to Tribal traditional cultural properties. Absent Boolean criteria: Government-to-government level of consulting participants (= b)

Boolean equation: AbCDEF
Example 3: The Tribe reports a successful consultation when the Tribal chair and the Agency head talk over the telephone (= B), early in the planning of the project undertaking (= C), an event preceded by an exchange of several letters in which the viewpoints of each is discussed and the issues of concern are narrowed (= D). They arrive at a Memorandum of Agreement (= F). Absent Boolean criteria: THPO or Tribal Liaison present (= a); funds for travel (= e)

Boolean equation: aBCDeF

The three example results are posted on a table of Boolean equations as follows:

1. ABCDEf
2. AbCDEF
3. aBCDeF

The equations resulting from each of the case examples indicate that successful consultation most likely occurs when all six (6) factors are present (ABCDEF). Absent the presence of the six factors, consultation can still be successful when a THPO or Tribal leader is involved. Also, while travel funds and consensus are important factors, consultation can still be successful even if one of these factors is absent. In the end, the factors C and D are indispensable attributes to a successful consultation. In other words, consultation can not be successful unless it occurs early in the planning process (C) and there is an exchange of information prior to the consultation event (D).

The Boolean tables compiled in this study were distilled from the factors indicated by survey respondents. Additional factors may have been present, but were not reported. The inability to capture additional and unreported factors would create a “false negative,” however, there is little likelihood of this happening given that responses were open-ended questions and a provided list of factors. Recurrent factors are those reasonable predictors of success, based on a survey of real-life situations. The survey could have controlled for a “false negative” on the importance of any discrete factor by supplying the factors and asking for a “yes” or “no” for each, but the purpose of leaving the field open for self-reporting and unbiased results would have been defeated. Consequently, this study does not test the worth of a single factor or criterion, but rather provides a formula for optimum likelihood of success in consultation with the best practices model emerging through the combination of factors.
VI. THE RESULTS OF THIS STUDY: WHAT MAKES CONSULTATION WITH TRIBES SUCCESSFUL

Broadly speaking, this survey addresses four aspects of consultation: (A) Preparing for Consultation; (B) The Process of Consultation; (C) Defining Success; and (D) The Formula for Successful Consultation. Each topic is set forth below with its own set of hypotheses, which are tested and analyzed.

Hypotheses To Be Tested

The data collected in the surveys are grouped to address seventeen (17) hypotheses raised in the pre-survey interviews as follows:

A. Preparing for Consultation
   1. The consultation is more likely to be successful when the Agency employs a Tribal liaison.
   2. There is a higher incidence of successful consultation when the Tribe has a THPO.
   3. Successful consultation is predicated on a first person familiarity between the Tribe and Agency representatives to the consultation.
   4. Successful consultation is dependent upon the presence of the Tribal chair and the Agency official.
   5. Agencies have the ability to determine the appropriate consulting partner for Tribes.
   6. Tribes and Agencies feel a need for training on successful consultation practices.

B. The Process of Consultation
   1. The timing of consultation events is critical to success.
   2. The place of consultation is a factor in success.
   3. The adequacy of information provided to Tribes prior to consultation is critical to success.
   4. Successful consultation is dependent upon funding for travel and face-to-face meetings.
   5. Consultation is defined as an interaction between informed participants.
   6. Decentralization of decision-making has an effect on the process.

C. Defining Success
   1. Agencies are concerned about immediacy of result and Tribes are concerned about the long-range impact to the resource and this difference
impacts the consultation process and prognosis for a successful consultation.

2. Agencies are more concerned with completing the process and outputs, and Tribes are more concerned with outcomes.


4. Consensus is not a reliable indicator of success.

5. Consultation is a path to resolution of issues or the avoidance of conflict.

D. The Formula for Successful Consultation
The formula for successful consultation exists in the survey data and can be revealed by Boolean analysis.

Results
The results of the study were used to verify or nullify each of the seventeen (17) hypotheses. Following each hypothesis is a summary of the survey responses. This summary allows an analysis of the pre-survey assumption.

A. Preparing for Consultation

Hypothesis 1. The consultation is more likely to be successful when the Agency employs a Tribal Liaison.

Results:
• Twenty-seven (27) projects reported the presence of an Agency Tribal Liaison, although there were an additional six (6) projects from Agencies that also have a Tribal Liaison. In one instance, the Tribal Liaison was expressly credited with the success of the consultation.
• Approximately half of the successful consultations included a Tribal Liaison.
• Three (3) consultations noted the Agency did not have a Tribal Liaison, the respondents expressed a need to have one (one Tribe, two Agencies).
• Tribal Liaisons were specifically credited in some instances with determining the consulting partners. In other responses the responsibility for the determination was unspecified.
• Two (2) responding Agencies specifically mentioned that the Tribal Liaison was a Native American.

Analysis: True. Having a Tribal Liaison is a positive factor in an efficient and successful consultation. Agencies that employ a Tribal Liaison are likely to engage in successful consultation. While the study did not request information on consultations that were not successful, the Tribal Liaison was prominently and consistently referenced in this study. Further study of Tribal Liaisons in
consultations, both successful and unsuccessful, would verify the importance of this position.

_Hypothesis 2. There is a higher incidence of successful consultation when the Tribe has a THPO._

Results:
- Of the thirteen (13) Tribes that initially reported a successful consultation, seven (7) had THPOs and three (3) were interested in or were establishing a THPO.
- Thirty-three (33) Tribes responded in phase two as a consulting partner, and of these, eleven (11) had THPOs (three of which initially reported) and eight (8) were considering THPO status.
- Of the total sixty-one (61) consultations that were reported, thirty-eight (38), or 62%, had at least one THPO as a consulting partner.
- Of these thirty-eight (38) reported consultations, there were twelve (12) that had two (2) or more THPOs listed and twelve (12) projects where THPO status was unavailable (non-recognized group, inter-tribal organization, or Alaska Native).
- Forty-one (41) of forty-six (46) THPOs existing at the time of this study either reported a successful consultation or were named in at least one as a consulting partner.

_Analysis:_ True. Over half (62%) of the successful consultations included a THPO, and respondents repeatedly said that the involvement of THPOs was necessary for a successful consultation experience. Agencies are beginning to recognize the value of involving the THPO early in the planning process. More than 90% of the 66 responses indicated that a THPO and/or an Agency Tribal Liaison was a factor in successful consultation.

_Hypothesis 3. Successful consultation is predicated on a first person familiarity among the Tribe and Agency representatives to the consultation._

Results:
- Six (6) Agency responses and six (6) Tribal responses reported relying on first person familiarity. There were nine (9) separate consultations that relied on the presence of a specific person. In eight (8) of these consultations, it was the impetus of specific individuals that established the process of successful consultation, which resulted in ongoing communication thereafter.
- Eight (8) Tribal responses and twelve (12) Agency responses reported relying on face-to-face meetings.
- Three (3) Tribal responses and one (1) Agency reported consistency in representatives as necessary throughout consultation and from one to the next.
• Two (2) Agencies reported keeping a current contact list, and one (1) reported
the need to update it often.
• Twenty-four (24) Tribal responses and twenty-five (25) Agency responses
reported that an atmosphere of respect, building trust and mutual
understanding of priorities were necessary.

Analysis: Not necessarily true. Meeting face-to-face is helpful in establishing
communication links for successful and on-going consultation. Having continuity
in the participants to consultation was preferred, but the critical factor was
meeting in an atmosphere of mutual understanding, respect and trust. While a
single person can be the catalyst for a successful consultation, the process can be
sustained where an ongoing atmosphere of respect and trust prevails.

**Hypothesis 4. Successful consultation is dependent upon the presence of the
Tribal chair and the Agency manager.**

Results:
• The presence of the Tribal chair was noted thirty-two (32) times by Tribes and
thirty-three (33) times by Agencies.
• Agency officials are noted as present by Tribes four (4) times and by
Agencies five (5) times.

Analysis: False, although without an Agency head present, the respondents
acknowledged that the process was not a true government-to-government event.
Consultation is a government-to-government process which Tribes take seriously
as demonstrated by the commitment of the Tribal chair to be present, but most
often Agencies assign the role of the government to a contractor, the applicant for
a license, or the Tribal Liaison. Nevertheless, Tribal officials are committed to
the consultation process and voice gratitude for being afforded consideration.
Since this study requested only input on successful consultations, the absence of
the government official apparently was not fatal to success. On the other hand,
the number of unsuccessful consultations attributed to the non-participation of the
Agency official is unknown. Of the paired responses only two (2) Tribes
considered the consultation not a success or not a consultation absent the Agency
official’s presence.

**Hypothesis 5. Agencies have the ability to determine the appropriate consulting
partner Tribes.**

Results: Agencies reported using the following means to determine appropriate
Tribes to include in consultation:
• Ten (10) sent letters to all Tribes that may have an interest in the area, using
ancestral homeland maps, other maps, or the history of Tribes in the area.
• Six (6) relied on research by consultants.
• Four (4) made calls and sent letters to known Tribes to ask whether they knew of other Tribes that should be included.
• Two (2) relied on the National NAGPRA website consultation database of Tribes.
• Seven (7) requested assistance from the SHPO.
• Three (3) used the BIA list.
• Six (6) requested assistance from intertribal organizations such as the Native American Heritage Commission in California.
• Three (3) used prior contacts as a model.
• One (1) relied upon knowledge within the Agency.

**Analysis:** True. Abundant and accessible means are available to Agencies to determine which Tribe(s) to consult. None of the Agencies expressed difficulty determining which Tribes to consult and were not concerned with broadly reaching out to Tribes. Of those Tribes consulted there were varying degrees of concern with a given project, but none voiced concern that they had been contacted unnecessarily. Once contacted, a Tribe can determine if they have an interest that will be impacted and a desire to participate, assuming they also are sufficiently knowledgeable about the project (see Process below). Perhaps most instructive is the procedure employed by two (2) respondents, who consulted with Tribes to identify the actual consulting parties on the project.

**Hypothesis 6. Tribes and Agencies feel a need for training on successful consultation practices.**

**Results:**
• Two (2) Tribes reported desiring training in consultation (dispute resolution). One (1) of these Tribes also reported desiring training on consensus building, diplomacy and grief counseling.
• Four (4) Tribes wanted Section 106 training, and one wanted NHPA training.
• One (1) Tribe wanted cultural sensitivity training for Agencies.
• In one instance, cultural and sensitivity training was provided by the Tribes to the Agency. This Agency reported one of their lessons learned as needing/requiring cultural training for senior leadership before they meet Tribes for the first time.
• Seven (7) Tribes reported they needed expertise, knowledge, understanding and/or experience with consultation and laws.
• One (1) Agency reported it wanted to receive “Consultation Coordination” training similar to what another Agency (BLM) receives.
• In one instance, a video documentary was created from a successful consultation and has been used by the Agency as a teaching tool during Environmental Conflict Resolution and Section 106 training.
Analysis: True. Cultural sensitivity together with consulting and dispute resolution skills foster successful consultation. Consequently, training on the process and methods of consultation is needed. While a Cultural Resource Management contractor often facilitated consultation, Tribes and Agencies voiced a desire for more skillful consultants. Compliance with and knowledge of the law were mentioned as necessary aspects of consultation, but none of the respondents expressed a desire to have counsel present during consultation.

B. The Process of Consultation

Hypothesis 1. The Timing of consultation events is critical to success.

Results:
- Fifteen (15) Tribes mentioned the importance of consultation occurring early in the project planning process.
- Sixteen (16) Agencies indicated that they consulted early in the project planning process or wished that they had done so.

Analysis: True. In addition to the results, Tribes and Agencies that did not explicitly use the terms, “early” or “timely” nonetheless spoke of working through consultation in the beginning of the project or prior to decision making. Pre-survey interviews spoke of an ongoing perception that Tribes delay projects, and a Tribal perception that Agencies wait until they have made decisions and progressed on a project before they notify Tribes. Neither situation is conducive to successful consultation. Clearly this study validates the hypothesis that timing of consultation is critical to success, and the earlier the better. Other responses spoke of ongoing consultation and meetings on general concerns prior to specific projects, which are other means of entering the consultation process early, when input can be the most meaningful and impending project deadlines are not yet a factor.

Hypothesis 2. The Place of consultation is a factor in success.

Results: Most of the consultation responses described more than one consultation event, which used a variety of approaches. Each point of contact listed in survey responses is tallied here from the field of sixty-six (66) responses
- Face-to-face meetings at Tribal and Agency offices were indicated eleven (11) times by Tribes and five (5) times by Agencies.
- The Tribe as a sole host was indicated six (6) times by Tribes and eight (8) times by Agencies.
- Tribes noted the Agency as sole host seven (7) times and the Agency six (6) times.
- A neutral or conference site was indicated by Tribes three (3) times and by Agencies nine (9) times.
• Locations that varied by topic were indicated fourteen (14) times by Tribes and four (4) by Agencies.
• Site visits as the place of consultation were indicated fourteen (14) times by Tribes and sixteen (16) times by Agencies.
• The telephone as a medium of consultation was indicated fourteen (14) times by Tribes and eighteen (18) times by Agencies.
• The mail, including email, was the modality of consultation noted eighteen (18) times by Tribes and twenty-three (23) times by Agencies.

Analysis: True. Conducting consultation at both Agency and Tribal sites or mutually convenient locations shows respect and consideration, and looms large in the attitudes of survey respondents across the board. Site visits were noted thirty (30) times, and indicates the importance attributed to walking the area together for fostering a mutual understanding of the circumstances and concerns facing the consulting partners. Surprisingly, other means beside face-to-face consultation often figured into a reported successful process, although the survey respondents noted a preference for face-to-face meetings. Telephone and mail contacts were employed most often as a follow-up to in-person meetings, or were utilized for efficiency after communication channels and trust already had been established in prior consultations. Agencies noted the use of newsletters to keep consulting partners informed as the project progressed, which indicates their realization that consultation is an ongoing process. The term “ongoing” frequently appeared in survey comments.

Hypothesis 3. The adequacy of information provided to Tribes prior to consultation is critical to success.

Results:
• Five (5) Tribe and four (4) Agency responses said that the Tribes should be involved in planning for the consultation meetings and in preparing the information exchanged prior to the meetings.
• Only one (1) response, by a Tribe, mentioned a desire to know their role at the outset.
• Ten (10) Tribes and two (2) Agencies felt that having information exchanged prior to the meeting was critical to success.
• Two (2) Tribes mentioned a need to know the needs of each party as a necessary predicate to successful consultation. There were no Agency responses that expressed the same need.
• Two (2) Tribes felt inundated by information and one (1) Agency felt that they had provided an overly abundant amount of information prior to consultation.

Analysis: True. The majority of Tribal respondents desired to be informed about the project prior to attending a consultation. Most of those Tribes viewed
preparation as a critical element of successful consultation. Some responses did not explicitly mention the receipt of information prior to consultation, but as they considered a successful consultation to be an exchange of views and concerns distinguishing an exchange of views from an informed basis for conversation would appear to be splitting hairs. Tribes mentioned a desire to receive information more often than Agencies noted a concern to provide it, so a gap in perception might exist as to the needs of the parties as they approach consultation. At the same time, inundating Tribes with documents could be counterproductive.

**Hypothesis 4. Successful consultation is dependent upon funding for travel and face-to-face meetings.**

Results:
- Sixteen (16) Agencies and eight (8) Tribes reported that success was attributed in part to a willingness of the Agency to travel to Tribal sites or at least rotate the location of the meetings.
- Twenty-two (22) Agencies and (18) Tribes reported that time and financial commitment to consultation was critical to success.

Analysis: As phrased, the hypothesis can be true and false. Recognizing that there is a cost to consultation, in both time committed by the participants and the preparation and travel required for the process, Tribes acknowledged and appreciated funding for consultation provided by the Agency. Nevertheless, consultation is an obligation of the Agency as a matter of law, and therefore some level of funding is mandated. The optimum point for funding is that point necessary for success. As apparent from the survey responses, successful consultation creates certain efficiencies. For example, where consultations subsequently build on prior relationships, less research may be needed to discover Tribes affected by and interested in a project, and the need for face-to-face meetings might be less. As this study requested only satisfactory experiences, the number of court actions, project delays and redesigned projects averted because of time and funds spent on productive consultation, remains unknown.

**Hypothesis 5. Consultation is defined as an interaction between informed participants.**

Results:
- Ten (10) Tribes and eight (8) Agencies include in a definition of consultation the component of communication. It is a time when the views of all parties are heard.
- Sixteen (16) Tribes and three (3) Agencies include the defining component of mutual understanding. Consultation is thus an exchange of information on the needs and desires of the others, where the objective is mutual understanding.
Nine (9) Tribes and three (3) Agencies specifically noted that consultation provides an opportunity to give meaningful input into plans and have impact on the decision making process.

Six (6) Tribes indicated that sending a letter alone is not consultation.

**Analysis:** True. Understanding the defining attributes of consultation is an area where Tribal and Agency responses were the most dissimilar. For Tribes, consultation involves listening, exchanging views, and having meaningful input into the final decisions and planning documents. By contrast, the majority of Agencies perceived consultation as a time to meet with Tribes and indicated to them that the Agency has listened when the planning document was written. The distinction may be subtle but profound. When asked to describe consultation the Agency responses tended to focus on technique -- invitees, place, method, friendliness, and caring, whereas the Tribal responses focused on dynamics -- understandings and exchanges of ideas. This difference may go to the core of success and failure, if not of any one consultation event, then of the totality of the consultation enterprise.

The six (6) Tribes who indicated that, for them, a letter is not consultation understood that a letter from an Agency was an effort by the Agency to consult. The Tribes warned that, since they may not see a letter sent to the Tribal office, they may not respond, but the failure to respond should not be understood as acquiescence. In fact, several Agencies responded that they sent a letter to the Tribe, received no response, deemed the lack of a response to be an absence of adverse opinion on the Agency action and deemed the event a successful consultation. Clearly, in these instances a failure to communicate on the needs of the parties in a consultation experience has occurred.

**Hypothesis 6. Decentralization of Agency decision-making has had a negative or positive effect on the consultation process.**

**Results:**

- Agency decisions were made by the Washington Headquarters Office for ten (10) projects, a regional or district office for thirty-five (35) projects, and five (5) from a local level (city, county, park).
- In addition, there were also ten (10) regional/district projects and two (2) local projects where the Agency had a Contractor.
- In one instance, it was reported that the regional commitments did not translate to the local level since the local office did not fulfill the agreements made at the regional level.

**Analysis:** Positive effect. Decentralization of decision-making is consistently noted as a positive factor. The correlation between proximity and success were
closely related, and evidences the level within the Agency at which commitments made to Tribe(s) were implemented.

C. Defining Success

**Hypothesis 1.** Agencies are concerned about immediacy of result and Tribes are concerned about the long-range impact to the resource and this difference impacts the consultation process and prognosis for a successful consultation.

Results:

<table>
<thead>
<tr>
<th>“Successes” (more than one indicator may have been given)</th>
<th>Tribes</th>
<th>Agencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>All opinions heard (open communication, listen)</td>
<td>10</td>
<td>12</td>
</tr>
<tr>
<td>Tribe was invited to the table and involved in the Agency decision (collaborative, joint, cooperative)</td>
<td>13</td>
<td>14</td>
</tr>
<tr>
<td>Achieve respect and mutual understanding</td>
<td>24</td>
<td>25</td>
</tr>
<tr>
<td>Mutual understanding of laws and responsibilities (knowledge, expertise, experience)</td>
<td>7</td>
<td>13</td>
</tr>
<tr>
<td>Protect sites/culture/recover remains/items/minimize/mitigate</td>
<td>12</td>
<td>8</td>
</tr>
<tr>
<td>Satisfied parties</td>
<td>2</td>
<td>11</td>
</tr>
<tr>
<td>MOU/MOA/Agreement/Solution</td>
<td>16</td>
<td>16</td>
</tr>
</tbody>
</table>

In addition, the following responses are notable:

- Eight (8) Tribes and five (5) Agencies reported wanting a signed document.
- One (1) Tribe viewed the consultation as unsuccessful because they did not sign a document.
- In one instance, an Agency reported that consultation should occur with all Tribes whether or not they sign agreements.
- Eight (8) Tribes and ten (10) Agencies reported that establishing ongoing communication was a goal in itself, and viewed concrete results as incremental long-range goals.

**Analysis:** False. This study negates the hypothesis that success is measured differently by Tribes and Agencies. While taking a long-range view of consultation as an ongoing process, both parties appreciate a discrete resolution at some point. Agencies and Tribes reported a desire for mutual satisfaction, and that the concerns of each party be addressed. Successful consultation, as reflected by an agreement, was equally regarded by both Tribes and Agencies. Tribes
reported concern for site protection more often than Agencies by a margin of three to two (3:2).

Open communication conducted against a backdrop of mutual respect and understanding, and honesty defines success. Coming to consensus is not critical to respondents’ perceptions of success. Tribes and Agencies had an equal number of responses that equated to an MOA or similar solution (16), but the majority of Tribes and Agencies agreed that fundamental success lay in incrementally building open communication, and mutual respect and understanding.

In response to the question, “What does success look like,” it is an open channel for respectful and ongoing communication. Tribes are invited to the table early in the planning process and are provided by the Agency with project specifics prior to any meetings. All Tribes having an interest in the outcome participate.

**Hypothesis 2. Agencies are more concerned with completing the process and outputs, and Tribes are more concerned with outcomes.**

Results:
- In one instance, an Agency characterized an agreement as a result of effective consultation, but not the primary objective.
- An almost equal number of Tribes (13) and Agencies (14) reported that Tribal involvement in the decision-making was a factor in defining consultation a success. (Note: This study did not test for site impact or outcomes of site management. Further study might look at these factors.)
- Twenty-four (24) Tribes and twenty-five (25) Agencies reported that creating an atmosphere of respect, building trust and mutual understanding of priorities, was a goal in and of itself.

**Analysis:** False. Agencies and Tribes reported a desire to follow an established process. Tribes and Agencies are more often in agreement than not, that consultation is an on-going process rather than a technical exercise with an immediate result.

The idea that Tribes and Agencies approach consultation with differing expectations or require different criteria for success is a presumption proved invalid by this study. Both parties value open communication, mutual respect and understanding, and a recognition that consultation must start as early in the process as possible. Also, both Tribes and Agencies expect to begin consultation early and with information on the project, generally, and its implications for them explained. Consultation does not begin until after the mutual exchange of information, including known information about the physical effect of the project and the priorities of the consulting partners.

Results:

- An equal number of Tribes and Agencies (6) reported previous relationships as a factor for success.
- Eight (8) Tribal responses and ten (10) Agency responses reported ongoing relations as important in successful consultation.
- Three (3) Tribal responses and one (1) Agency response reported desiring consistency of representatives.
- In one instance, litigation on one project has stopped all consultations by the Tribe with that Agency on any project.
- In another instance, the Tribe continues to consult with the Agency, although past consultation was not always successful.

Analysis: True. Both Tribes and Agencies agree that a positive relationship between the parties is an important factor in successful consultation. The hypothesis that success breeds success is a point proven in this study and further substantiates the efficiencies to be gained by an initial investment in meaningful consultation.

Hypothesis 4. Consensus is not a reliable indicator of success.

Results:

- Tribes and Agencies indicated that consultation was a success even when one or more parties were not pleased with the result.
- Tribes and Agencies indicated that the consultation was successful even when no consensus was reached.

Analysis: True. Both Tribes and Agencies report consensus as one of the products of successful consultations, but parties should beware of “false consensus.” Whereas an Agency feels they have completed consultation by obtaining an agreement, the acquiescence by a tribe(s) that felt that they had no other option, is not an expression of successful consultation. Two Agencies reported that reaching an agreement did factor in their characterization of the consultation as successful. Therefore, while consensus is a likely by-product of consultation it is not a necessary attribute of consultation or an indicator of success.
Hypothesis 5. Consultation is a path to the reduction and resolution, or the avoidance, of conflict.

Results:
• In one instance a Tribe reported that once a conflict has occurred, it is hard to get back into consultations. In another instance a Tribe reported that when they do have a conflict with local staff, they then go back to the table with Agency officials for further consultation. No other Tribes reported ‘conflict’.
• Two (2) Agency responses reported that consultation reduces conflict.
• In one instance, litigation on one project has stopped all consultations by the Tribe with that Agency on any project.
• Seven (7) Tribal responses and eleven (11) Agency responses characterized addressing ‘concerns’ as important.
• One (1) Tribe reported that they were able to bring attention to Agency officials the possible negative effects that might have occurred through consultation.
• Sixteen (16) consultations were started when an ‘issue’ arose; nine (9) of these consultations were initiated by Tribes. An additional four (4) consultations were started by an Agency to avoid possible negative effects.

Analysis: True. Respondents did not characterize conflict avoidance, resolution or reduction as ‘consultation’ even though consultation does reduce and resolve or avoid conflict. Instead, they reported ‘addressing concerns,’ receiving ‘input,’ resolving ‘possible negative effects’ or as an ‘issue to be discussed’ as the agenda of consultation. Consultation reduces conflict, but the objective of the consulting parties goes much deeper and dispute resolution was not the objective.

D. Summary of All Hypothesis Testing

The responses indicate that complex issues may require multiple meetings for resolution, but that failure to reach a global agreement is not necessarily viewed as an indicator of failure of consultation when the parties leave the meeting with a feeling of fair treatment and openness. Success was often gauged not by the completion of a final agreement, but by the progress made in exploring ideas and areas of commonality, and building communication links. No project type or size was regarded as problematic, as long as the Agency brought the Tribe to the table.

The Formula for Success: Boolean Analysis

Each Tribal response and each Agency response was listed on the Boolean data table which recorded the presence (= capital letter) or absence (= lower case letter) for each consultation recorded. The Boolean “truth table” listed the formulas for success, compiled from the data table, and indicated the number of times the formula was seen. One column listed Tribal formulas and one listed
Agency responses. The "truth table" allows outliers to be observed and points of strong agreement between Tribes and Agencies to be seen. The simplification table is the algebraic reduction of the formulas into the simplified expression.

**Tribal Responses**
The simplification of results from the Tribal responses yields the formula:

\[ C_{\text{Def}}(AB + Ab) = AC_{\text{Def}}(B + b) \]

that is: \( ABC_{\text{Def}} \) or \( AbC_{\text{Def}} \)

According to Tribes the formula for success in consultation always requires early action (\( = C \)) and the provision of information (\( = D \)). Funding for Tribes to participate in consultation (\( = e \)) was mentioned as a factor, but not so often that it could be deemed critical to success. Reaching a final agreement (\( = f \)) was not the goal of consultation, rather the goals were gaining a seat at the table, being involved in the decision-making process and developing channels of communication for ongoing interaction. Tribal respondents mentioned these goals more frequently than protecting sites, which would be consistent with an overriding desire for input into the final agency decision. The presence of a Tribal Liaison and/or a THPO (\( = A \)) was also mentioned in an overwhelming number of responses. The ways in which this factor contributes to successful consultation may merit further study, and could be useful in training new Tribal Liaisons and THPOs. Certainly, consultation must occur on a government-to-government basis, but the presence at the consultation of the Tribal chair was not a deciding factor in success (\( = B + b \)). The presence of the Tribal chair was mentioned in about half of the successful consultations reported. The presence of the Tribal chair and the absence of the corresponding Agency official as impacting the success of consultation is a matter that may be reserved for future study. In reducing the formulas \( AB \) (presence of a Tribal Liaison/THPO and Tribal/Agency officials (\( = AB \)), was evenly weighted with presence of Tribal Liaison/THPO and absence of Tribal/Agency official for success (\( = Ab \)).

**Agency Responses**
The simplification of results from the Agency responses was more involved as the combinations factors were more diverse than for Tribes. Formulas reported in one or two instances were deleted as outliers and those reported in three or more responses were entered onto the simplification table, which, when reduced, revealed the following:

\[ A_{\text{Def}}(BC + Bc + bC + bc) \]

Where \( A_{\text{Def}} \), the presence of a THPO and/or an Agency liaison (\( = A \)), with an information exchange prior to the consultation event (\( = D \)), but in the absence of funds for travel (\( = e \)) and without reaching a final agreement (\( = f \)).
The weight of the results for government-to-government consultation (= Bb) and consultation early in the process (= Cc) was almost identical:

\[ BC(16) \quad Bc(13) \quad bC(13) \quad bc(17) \]

Where:
- \( BC \) = Presence of Tribal and Agency officials, early in the Section 106 process,
- \( Bc \) = Presence of Tribal and Agency officials, timing not a factor,
- \( bC \) = Tribal and Agency officials not a factor, consultation early in the process,
- \( bc \) = Neither Tribal and Agency officials nor timing a factor in consultation.

Therefore the formula for successful consultation derived from Agencies is in agreement with that gleaned from the Tribal responses for all factors, with one notable exception. The one factor on which the two groups diverge is timeliness of the consultation (= C). For Tribes early consultation was a critical factor for success (= C), while Agencies were evenly split on whether it was or was not a factor (= C or = c).

On the matter of timeliness, responses from Tribes found early consultation to be critical, as they were given input into decision making at a time when it could have meaningful impact. Being asked to the table early in the planning process was taken by Tribes as a sign that the Agency was seeking input from Tribes in order to incorporate their concerns into the execution of the undertaking. Early action on consultation resulted in efficiencies in the planning process. By contrast, there was a correlation in Agency responses between a lack of regard for early action (= c) on consultation and the need for a final result (= F) in 12 responses. Apparently in those instances where the Agency had not included Tribes in planning, they were faced with an immediate, critical issue needing prompt resolution. Consequently, where consultation was remedial, the process tended to be final result driven. When contacted by this study to submit a response on projects where early contact was not made, in order to match Tribal and Agency views on individual projects, Tribes responded either that they would not consider such interaction to be consultation, or that it was not a successful method of consultation.

**Formula of Successful Consultation**

Combining the Tribal and Agency formulas for successful consultation results in the following:

Tribal:
\[ A \ CDef (B + b) \]

Agency:
\[ A \ Def (BC + Bc + bC + bc) \]
\[ ACDDef (B + b) \]
The hypothesis that Tribes and Agencies do not think similarly about the necessary attributes of successful consultation is proven false by this study, for there is consensus on the formula for success. Accordingly, $ACDef (B + b) = $ in the presence of a THPO and an Agency Tribal liaison ($= A$), consultation occurs early in the project planning process ($= C$), there is an exchange of information as a predicate to the consultation event ($= D$), the lack of funding for travel does not prevent success in consultation ($= e$), reaching a final result is not the gauge by which success will be measured ($= f$), and the presence of a Tribal chair and an Agency official is a neutral factor ($B + b$).
VII. STUDY REVELATIONS: BEST PRACTICES THAT EMERGE

The survey responses highlight an emerging understanding of the characteristics of successful consultation. Some of these Best Practices are:

- True government-to-government contact between the Agency and Tribe, where high level Agency representatives meet with Tribal leaders;
- Multiple contacts that begin early in the planning process and continue throughout the project;
- Multiple venues for consultation, such as the Agency office and locations close to Tribes and the area of the undertaking;
- Formal and informal meetings;
- The existence of an Agency Tribal Liaison;
- The Agency’s fostering of a relationship with the THPO;
- An inclusive approach to contacting Tribes having an interest;
- Consultation with unrecognized Tribes, separate from recognized Tribes, unless the unrecognized Tribe has an on-going relationship with the recognized Tribe;
- An early effort to identify the areas of concern to the Tribes;
- Provision to Tribes of full and candid information prior to the first meeting;
- An open-ended and flexible agenda (no hidden agendas);
- Facilitators for the sessions alternate between Agency and Tribal leaders;
- A concerted effort by the Agency to have all Tribes with an interest be present for all sessions;
- A successful result is viewed as partners arriving at an agreement, but reaching an agreement is not an end in itself; (Note: Framing the issues and understanding impacts early in site management decisions renders the process meaningful, but this study did not test for outcomes of site management.)
- Tribes participate in consultation on the invitee list as a preliminary consultation and participate on the agenda setting and planning of the consultation.

These best practices were observed in the survey responses, supported by the Boolean Analysis, and are incorporated into the Model Protocol Steps below. These Model Protocol Steps are general; certain Agencies will have more specific ones. Nevertheless, these steps are actions that need to take place for consultation to succeed. The following protocol embodies the principles and suggestions derived from the surveys.
VIII. MODEL PROTOCOL STEPS

Step One: Planning Document

The Agency early in the planning stage compiles a draft of the scope of project, including area of potential effect.

Step Two: Determining Consulting Partners

The Agency creates a Tribal Contact List of Tribes potentially having an interest in the project area by:
1. Contacting the THPO of the Tribes or Tribal Leader of the Tribes not having a THPO, in the geographic area:
   a. To determine if they have an interest
   b. To determine if they know of other Tribes that may have an interest.
   AND
2. Determining from state or regional intertribal organizations Tribes having an interest, but not necessarily presently residing in the state of the project area.
   AND
3. Consulting with identified Tribes on what other Tribes may be included.

Step Three: Initial Contact with Consulting Partners

The Agency mails a copy of the Agency project plan, relevant information and a request for a consultation meeting to the THPO (for Tribes having a THPO) or Tribal Leader (for Tribes not having a THPO).

Step Four: Arranging for Consultation Meetings

The agency arranges with the Tribal contacts, a time, place, agenda, and travel funds for the meeting by:
1. Letters to Tribes; and
2. Follow-up by telephone to confirm receipt of documents.
3. At this point, the Agency needs to determine if there are barriers to Tribal participation in consultation, such as timing, financing, and/or location.
4. There is a discussion on whether there will be sensitivities regarding Sacred Sites and the need to include a religious leader.
5. Establish meeting format.
6. Establish goals:
7. For example, goals could include Agency officials and Tribal representatives sharing concerns and desires about the project, and the mitigation of impacts to Tribal cultural sites.
Step Five: Consultation Meeting

1. At start of meeting: Confirm meeting format, facilitator, and issues to be addressed.
2. Discussion time.
3. Throughout the meeting: Provide time for meeting participants to get to know each other.
4. Conclude with plan for next meeting: Agenda/goal for next meeting, drafts of areas of agreement, and matters to be resolved.

Step Six

Repeat step 5, as necessary.

Step Seven

Memorandum of Agreement (MOA) or resolution or agreement on mitigation of impacts to Tribal cultural site reached.
IX. CONCLUSION

There are a number of conclusions that can be drawn from this study which are instructive for the development of a protocol for successful consultation between Tribes and Federal Agencies in Section 106 compliance. Some of them are:

- There are efficiencies in project development and execution to be gained from the employment of an Agency Tribal Liaison who works with a THPO.
- Involvement of Tribes by Agencies early in the planning process is critical for smooth and orderly development of the project and timely execution of the project.
- Successful consultation begets future successful consultation. There is a benefit from the efforts that result in successful consultation, as open channels of communication are not likely to be disrupted when Agency personnel transfer to other positions or Tribal responsibilities change.
- Good process lasts beyond individual personal relationships, even though the latter may have initially opened the door to communication.
- Mutual respect and understanding of concerns is of prime importance to Tribes and Agencies when engaging in consultation.
- Neither Tribes nor Agencies have time and money to spare. Both look for efficiencies in working relationships. Effective consultation is seen by both as a positive factor in project efficiency. Neither Tribes nor Agencies desire to remediate a situation that has gone bad due to lack of open communication or a failure to build ongoing working relationships.
- A meeting without a previously disclosed agenda is not a consultation.
- A meeting where a participant is not informed prior to the meeting of the project specifics, including the project scope and areas of potential impact, is not a consultation.
- Meaningful consultation is predicated on informed participants.
- Successful consultation is not measured in the immediate attainment of an agreement. Consensus can build over time.
- Agreements reached as the product of consultation, even though time consuming are well regarded, understood and lasting.
- Consultation is an interaction and exchange of ideas that seeks to develop a mutually agreeable plan.
- That Tribes may be motivated by a desire to protect cultural sites and Tribal interests and Agencies may be motivated by a desire to meet the Agency mission and move a project forward, does not mean that the two groups do not agree on what is successful consultation.

It is apparent that what began in 1992 as amendments to the National Historic Preservation Act and was reiterated in several Executive Orders regarding consultation with Tribes, has begun to filter into the rubric of daily practice for
Federal Agencies and other government entities whose undertakings impact Tribal sites and concerns. Government Agencies understand that there is a requirement to consult with Tribes, and some have done an admirable job of instigating effective consultations. Others require some guidance, and have not yet reached a comfort level in working with Tribes. All are hesitant to spend government resources in ways that cannot be shown to lead to efficient project completion.

The results of this study should help Tribes and Agencies in two ways: (1) by showing that there are efficiencies to be gained in consultation with Tribes, and that consultation is a desirable practice even without the constraint of legal mandates; and (2) by providing discrete factors to be included in Agency consultation protocols, with assurances that there is a high probability of success in those consultations that employ these suggestions.

Additional Research and Information

As the survey solicitation was ongoing, information was compiled on Agency and Tribal consultation policies, Agency and Tribal protocols, other studies on consultation, and scholarship on consultation from reports, model protocols, books and articles and websites. This information was used as background for the analysis in this study and has been submitted with the final report as a compendium on consultation with Tribes in historic preservation (see Appendix 1, Online Resources). This bibliography is by no means exhaustive, additional research to create a definitive compilation of consultation materials would be very useful. The Historic Preservation Portal of the Federal Preservation Institute in the National Park Service has been compiling information specifically on consultation with tribes and Section 106 of the NHPA (www.codetalk.fed.us/fpi.html).
APPENDIX 1

"Online Resources"

The following websites contain information on Federal Agency, Tribal, and State policies and other information to assist in conducting tribal consultation.

1. Agency Regulations, Codes, and Orders on Tribal Consultation

Advisory Council on Historic Preservation (ACHP)
Regulations Governing the NHPA Section 106 Review Process, Part 800 Protection of Historic Properties (36 C.F.R. 800)

Department of the Army
Army Regulation (AR) 200-4, "Cultural Resources Management"
https://www.denix.osd.mil/denix/Public/Policy/Army/r200_4.pdf

Fort Bragg, North Carolina, Standing Operating Procedures (SOP) #16 Native American Consultation:

Department of the Interior
National Park Service, Native American Graves Protection and Repatriation Act Regulations (43 C.F.R. 10)
http://www.cr.nps.gov/nagpra/MANDATES/43C.F.R.10_10-1-03.htm

Executive Memorandum
Memorandum on Government-to-Government Relations with Native American Tribal Governments, April 29, 1994 (superceded)
http://www.cr.nps.gov/nagpra/AGENCIES/Clinton_Memorandum.htm
Memorandum on Government-to-Government Relationship with Tribal Governments, September 23, 2004

Executive Orders
Executive Order 12898 (February 11, 1994) Environmental Justice

Executive Order 13007 (May 24, 1996) Sacred Sites
Executive Order 13084 (1998) Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 (November 6, 2000) Consultation with Indian Tribal Governments

2. Federal Agency Online Resources - Consulting with Native Americans

Advisory Council on Historic Preservation (ACHP)
Policy Statement Regarding ACHP’s Relationships with Indian Tribes
http://www.achp.gov/policystatement-tribes.html

Department of Agriculture
Forest Service
National Resource Guide to American Indian and Alaska Native Relations
(see FSM 1563 in Appendix A)
http://www.fs.fed.us/people/tribal/

Natural Resources Conservation Service (NRCS)
Cultural Resources and Consultation Policy: NRCS Nationwide Programmatic Agreement with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers
NRCS National Cultural Resources Procedures Handbook
NRCS Tribal Program Delivery Policy, chapters of the agency’s General Manual. Title 410-Rural Development, Part 405 “American Indians and Alaska Natives” A-D

Courses:
“Cultural Resources Web-Based Training,” designed for awareness, not technical, training for USDA personnel, partners, contractors and the public
http://www.nedc.nrcs.usda.gov/catalog/cultres.html
“Working Effectively with Alaskan Natives,” designed to sensitize, inform and experience facets of Indian culture, history and protocols
http://www.nedc.ncrs.usda.gov/catalog/workwithalanat.html
“Working Effectively with American Indian Tribes,” designed for awareness and basic understanding of American Indians and Indian Country

http://www.nedc.ncrs.usda.gov/catalog/workwithamerind.html
“Planning and Contracting in Indian Country,” advanced training for field that spells out what tools and background are needed to promote successful delivery of NRCS technical services and programs

http://www.nedc.nrcs.usda.gov/catalog/plnandcontind.html
“Consultation with American Indian Governments,” examines the unique historical, legal and political relationship between the US and Indian nations

http://www.nedc.ncrs.usda.gov/catalog/consultwithind.html

Department of the Army
SOP#16 Native American Consultation:

Department of Commerce and General Services Administration (GSA)
General Services Administration
Policy on Consultation
http://www.gsa.gov/gsa/cm_attachments/GSA_BASIC/ADM%201072_1_R2HC2-b_0Z5RDZ-i34K-pR.doc

National Oceanic and Atmospheric Administration (NOAA)
Cultural Resources and Consultations with Native American Indian Tribes
http://boulder.noaa.gov/updates/tribes.html

Department of Defense (DoD)
American Indian and Alaska Native Policy, 1998
https://www.denix.osd.mil/denix/Public/Native/Outreach/policy.html

Native American Traditions and Cultures: Implementing DOD Native American Policy
https://www.cec5s.navy.mil/coursedetail.cfm?CourseID=66

Department of Energy (DOE)
DOE bibliography on consultation
http://www.trex-center.org/naibib.asp
Environmental Policy & Guidance, American Indian Religious Freedom and Native American Graves Protection and Repatriation Acts
Native American and Alaska Native, Tribal Government Policy
http://www.ci.doe.gov/indianbk.pdf

Department of Health and Human Services
Agency for Healthcare Research and Quality
American Indian/Alaska Native Consultation Plan
http://www.ahrq.gov/about/tribalplan.htm

Centers for Medicare and Medicaid Services (CMS)
American Indian and Alaskan Native Consultation Strategy

Indian Health Services (IHS)
http://www.ihsgov/AdminMngrResources/Regulations/deptpolicy.asp

Department of Housing and Urban Development (HUD)
American Indian and Alaskan Native 1994 Policy Statement
Government-to-Government Tribal Consultation Policy
http://www.hud.gov/offices/pih/regs/govttypgov_tcp.cfm

Department of Homeland Security
Federal Emergency Management Agency (FEMA)
Final Agency Policy for Government-to-Government Relations with American Indian and Alaska Native Tribal Governments
http://www.fema.gov/tribal/ntagov_policy.shtm

Department of the Interior
Bureau of Indian Affairs (BIA)
Guidelines for Integrated Resource Management Planning in Indian Country
http://www.doi.gov/bureau-indian-affairs.html, (not accessible at this time)

Bureau of Land Management (BLM)
BLM Handbook, H-8610-1 General Procedural Guidance for Native American Consultation
http://www.blm.gov/nhp/efoia/wo/handbook/h8160-1.html

Bureau of Reclamation
Consultation and Coordination

Fish and Wildlife Service
http://nativeamerican.fws.gov/fy99anrep.html

National Park Service
National NAGPRA. Native American Consultation Database, to assist in identifying consulting parties
http://www.casit.ark.edu/other/nps/nagpra/
Map Index of Indian Reservations in the Continental United States
http://www.cr.nps.gov/nagpra/DOCUMENTS/ResMAP.HTM

Federal Preservation Institute (National Park Service)
General information website with links and training materials
http://www.codetalk.fed.us/fpi.html

Office of Collaborative Action and Dispute Resolution
Compilation of Agency Consultation Policies, see:

Department of Justice
Policy on Indian Sovereignty and Government-to-Government Relations with Indian Tribes, 1999
http://www.usdoj.gov/otj/sovtrb.htm

Department of the Navy
Policy for Consultation with Federally-recognized Indian Tribes

Department of Transportation (DOT)
Federal Highway Administration (FHWA)
Historic Preservation, Tribal Issues
http://environment.fhwa.dot.gov/histpres/tribal.htm
Section 106 Tribal Consultation Q & A’s
Native American Consultation Programmatic Agreement on Section 106 Tribal Consultation Process for the Interstate 25 Corridor Environmental Assessment between FHWA Colorado and Colorado DOT, Colorado SHPO, Cheyenne and Arapaho Tribes of Oklahoma, Kiowa Tribe of Oklahoma, Northern Cheyenne, Pawnee Tribe of Oklahoma, and Southern Ute Indian Tribe
Wisconsin, DOT
Transportation Synthesis Report, State DOTs and Native American Nations, 2004

*Environmental Protection Agency (EPA)*
Policy, Administration of Environmental Programs on Indian Reservations, 1984
http://www.epa.gov/indian/1984.htm
Memorandum of Actions for Strengthening EPA's Tribal Operations, 1994
http://www.epa.gov/indian/tribe.htm
Interagency Working Group on Environmental Justice, Native American Task Force
http://www.epa.gov/compliance/environmentaljustice/interagency/

*Federal Communications Commission (FCC)*
Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, June 2000

3. **State Consultation Policies and Protocols**

*Alaska*
Office of the Governor, *Administrative Order No. 186*
http://www.gov.state.ak.us/admin-orders/186.html

*Arizona*
*Arizona Commission of Indian Affairs, Enhancing Tribal-State Partnerships Through the Town Hall Process*

*California*
Governor’s Office of Planning and Research, “Tribal Consultation Guidelines,” April 15, 2005
http://www.opr.ca.gov/SB182004.html

*Idaho*
Idaho Transportation Department, Section 1800 Historical, Archaeological and Cultural Resources
http://www.itd.idaho.gov/manuals/Online_Manuals/Environmental/HTML_20Files/1800.htm

*Iowa*
Maine
Resolve, to Foster the Self-governing Powers of Maine's Indian Tribes in a Manner Consistent with Protection of Rights and Resources of the General Public, Chapter 45 H.P. 926-L.D. 1269
http://janus.state.me.us/legis/ros/1om/LOM118th/RESLV12to85-33.htm

Michigan
Governor, Executive Directive 2001-2
Policy Statement on State-Tribal Affairs, May 2001
http://www.michigan.gov/formergovemors/O, 1607.7-212-31303_31306-1831---M_2001_5_00.html#ExecutiveDirective20012

Minnesota
Department of Transportation, Government-to-Government Transp. Accord
http://www.dot.state.mn.us/mntribes/accord02.doc
Minnesota Tribes and Transportation E-Handbook
http://www.dot.state.mn.us/mntribes/handbook/
Executive Department, Executive Order 03-05
Affirming the Government-to-Government Relationship between the State of Minnesota and Indian Tribal Governments Located within the State of Minnesota, April 2003

Mississippi
Accord Between the Executive Branches of the Mississippi Band of Choctaw and The State of Mississippi, 1997
http://www.choctaw.org/government/executive_accord.htm

Montana
http://data.opi.state.mt.us/bills/2003/billhtml/HB0608.htm

New Hampshire
Historic Preservation – s. 227 C: 8d,
Consultation with Native American Community
http://www.gencourt.state.nh.us/rsa/html/XIX/227-C/227-C-8-d.htm

New Mexico
Historic Preservation Division, Department of Cultural Affairs
Native American Consultation and Section 106 Outreach
http://nrnhistoricpreservation.org/OUTREACH/outreach_section106.html
http://www.state.nm.us/oia/pdf/PolicyProcedures.pdf
New Mexico and Navajo Nation Statement of Policy and Process, 2003
http://www.state.nm.us/oia/pdf/Navajo.pdf
NM and All Indian Pueblo Council Statement of Policy and Process, 2003
http://www.state.nm.us/oia/pdf/Pueblo.pdf

North Dakota
North Dakota Indian Affairs Commission, Protocol When Working with Tribes
http://www.health.state.nd.us/ndiac/protocols.htm

Oregon
Office of the Governor, Executive Order No. EO-96-30, State/Tribal Government-to-Government Relations
http://www.leg.state.or.us/cis/execord96-30.pdf

Tennessee
Tennessee Valley Authority
http://www.tva.gov/river/landandshore/culturalresources/native.htm

Washington
Department of Transportation, Centennial Accord Plan
Executive Order Number: E 1025.00 “Tribal Consultation Policy”
General Websites on State Laws for Archeological/Cultural Resources:
Indian Burial and Sacred Grounds Watch
http://www.ibsgwatch.imagedjinn.com/learn/lawsstate.htm

4. How to Locate Tribes (in addition to searching for Tribal websites)

Department of the Army Maps
http://www.wes.army.mil/el/ccspt/naramap/usa_pg.html

Department of the Interior (Bureau of Indian Affairs)
Tribal Leaders Directory
http://www.doi.gov/leaders.pdf
National Park Service--National NAGPRA Native American Consultation Database to assist in identifying consulting parties  
http://www.cast.uark.edu/other/nps/nacd/  
Map Index of Indian Reservations in the Continental United States  
http://www.cr.nps.gov/nagpra/DOCUMENTS/ResMAP.HTM

Department of Transportation  
American Association of State Highway and Transportation Officials Identifying Tribes for Consultation  
http://environment.transportation.org/environmental_issues/tribal_consultation/identifying.htm  
FHWA -- Local Technical Assistance - research site  
http://www.ltapt2.org/resources/ttaplinks.htm

States:
For a listing of state commissions see:  
Tribal Court Clearing House  
http://www.tribal-institute.org/lists/state_relations.htm  
National Conference of State Legislatures  
http://www.ncsl.org/programs/statetribe/stlegcom.htm

California  
Alliance of California Tribes  
www.allianceofcatribes.org  
California Indian Legal Services  
www.calindian.org  
California Tribal Nations Emergency Management Council (Southern Region)  
cwalters@sanmau-el-nsn.gov  
Native American Environmental Protection Coalition  
tribalenvironment@yahoo.com  
Native American Heritage Commission, California  
nahc@pachell.net

Idaho  
http://www.itd.idaho.gov/civil/tribal-links.htm

Tennessee  
Tennessee Commission of Indian Affairs  
http://www.state.tn.us/environment/boards/tcia.php  
Advisory Council on Tennessee Indian Affairs  
http://www.actia.org/
APPENDIX 2

“Survey Responses”

Original Survey Responses: 13 Tribes = 18 projects; 24 Agencies = 43 projects;
Total: 61 projects

Consulting Partner Responses: 33 Tribes; 32 Agencies; Tribal Organizations: 2;
Non-Recognized Tribes: 4; Agency Other: 4.
Total – 44 projects
(17 projects with no Consulting Partner responses)

O=Other
NR=Non-Recognized

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APPENDIX 3

“Survey Form”

NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS
P.O. Box 19189 • Washington, D.C. 20036-9189
Phone: (202) 454-5664 • Fax: (202) 466-7706 • www.nathpo.org

“Tribal Consultation: Best Practices in Historic Preservation”
National Historic Preservation Act, Section 106 Process

SURVEY FORM

This form has been developed for your ease of use. Please complete one form for each project. Attach additional sheets, if you need additional space. Related, written information (reports, for example) may also be attached, if you feel that it is helpful. If you would rather respond in a letter that contains the information requested, please send to Dr. Sherry Hutt at contact information listed below.

Tribe or Agency: ____________________________
Name and Title of Respondent: ________________
Telephone: ________________________________ E-mail: ________________________________

Identify Project: ____________________________

Project Dates (exact if know, estimates okay):
Dates & Locations of Consultation(s):

Consultation Parties (Tribe or Agency and which party on which date):

Titles of participants:
Briefly describe the project:

Describe the consultation (where did it occur and how did it operate?)

In your estimation, how would you measure a successful consultation?
Was this consultation successful, and if yes, what made it so?

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________


Does your Tribe have a THPO?: ___Yes ___No ___We are interested and/or establishing.
Does your Federal Agency have a Tribal Liaison?: ___Yes ___No
How did your Federal Agency determine which Tribe(s) to consult?
________________________________________________________________________

Was the SHPO involved, and if yes, how?
________________________________________________________________________

Did the Tribal Liaison take part in the process? ___Yes ___No Other:
________________________________________________________________________

Lessons learned (How might the process been improved?):
________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

May we contact you for follow-up questions? ___Yes ___No
What is the best way to contact you (see page 1)? ___Telephone ___Email

Deadline for returning this form: Friday, May 14, 2004
(If extension needed, please contact Dr. Hut.)

Return to: Dr. Sherry Hut, Principal Investigator
Best Practices in Tribal Consultation Project
2745 - 29th Street, NW #208
Washington, DC 20008

Fax: (202) 466-7706
Email: sherryhutt@aol.com

Questions? Please contact Dr. Sherry Hut at (602) 751-3683
Thank you for your participation in this project.

*************

Information supplied remains the property of the NATHPO and ACHP "Best Practices in Tribal Consultation" project and will be summarized into a final report. No specific information will be included without prior approval.
ABOUT NATHPO

The National Association of Tribal Historic Preservation Officers (NATHPO) is a Washington, D.C. based national, non-profit membership association representing the collective and shared interests of the Tribal Historic Preservation Officers and all Tribal governments. NATHPO monitors the U.S. Congress, Administration, and state activities on issues that affect Tribes. NATHPO also provides technical assistance, training, and operates a website www.nathpo.org and free electronic news service “eNews from NATHPO.”

ABOUT THE AUTHORS

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NAHC Consultation Guidelines
April 7, 2005

In order to further the goals of protecting Native American cultural features and the recognition of California Native Americans' interest in preserving and protecting those features through consultation, the Native American Heritage Commission recommends the establishment of a cooperative relationship between appropriate tribal governments and Agency or Department officials that considers and respects the views of all participants and acknowledges the goal of developing mutually acceptable cultural feature protection strategies.

Consultation should be viewed as "the right to have a seat at the table, a chance to persuade the responsible ... official to do the right thing."[1]

For many Agency or Department officials, consulting with Native American tribes will be a new experience that draws upon little from prior experience. There are cultural differences that need to be respected throughout the process. Indian people may be more accustomed to an oral tradition rather than a written tradition, potentially making what and how things are said during consultation mean far more than the written documents or agreements that will result from the consultation. All tribes, whether federally recognized or non-federally recognized, should be regarded as unique and independent governmental entities with traditions and hierarchical structures that must be recognized and respected. Appropriate tribal protocols should be followed when approaching tribal governments. More than one tribe may have a cultural affiliation with the proposed project area; agency officials should be prepared to hold concurrent consultation sessions if a combined consultation format is not acceptable to the tribes.

Agency officials must be aware that the consultation process is in no way intended to affect, diminish or reduce the sovereign status of any California Native American tribe.

The following are recommendations for Agency or Department use in initiating the consultation process with tribes.

1. Before the need for consultation arises, the following strategies are recommended:
   - Agencies or Departments should designate an official with principal responsibility for carrying out consultation activities. Agencies or Departments should seek to appoint a designee with knowledge of California Native American culture who has direct access to Agency or Department decision-makers.
   - Agencies or Departments should obtain from the NAHC the lists of appropriate tribes with potential for interest in property within the Agency or Department’s jurisdiction.

Agencies or Departments should complete a records search on the area of potential effect with the California Historic Resource Inventory System (CHRIS) and the Native American Heritage Commission's Sacred Lands File. The results of such searches should be shared with the tribe during the request for consultation, including the likelihood that cultural features might be present, thus demonstrating the Agencies or Departments' awareness that sensitive cultural features may be present that could be threatened by the proposed project or activity. The lack of recorded archaeological or cultural/sacred resources should not be presumed to preclude the existence of cultural features within the area of potential effect.

The Agency or Department designee should serve as the primary contact for consultation with tribes in order to facilitate the development of an on-going working relationship between the appropriate tribal governments and the Agency or Department.

Agencies or Departments should never assign their consultation responsibilities to a contractor or developer.

Agency officials should initiate contact directly with the tribe's officially chosen leader (e.g. chairperson, spokesperson, captain, etc.) to ask if tribal consultation protocols are already in place. Such protocols may specify cultural resource contacts within the tribe, procedures, time limits, restrictions, etc.

If protocols are not available, the Agency or Department should seek assistance from tribal officials to identify the appropriate procedures to follow in meeting the tribe's consultation needs.

Development of mutually agreed-upon protocols may result in more effective consultation efforts with individual tribes.

Either the Agency or Department or the tribe may request revisions to the protocols with prior notice.

2. Consultation is intended to address the preservation and mitigation of impacts to California Native American historic, cultural, or sacred sites, as are defined in Public Resources Code 5097.9 and Public Resources Code 5097.993, including sites that are listed or may be eligible for listing in the California Register of Historic Resources, historic or prehistoric ruins, burial grounds, any archaeological, prehistoric or historic Native American rock art, any archaeological, prehistoric or historic features, inscriptions made by Native Americans at such a site, places of worship, sacred or ceremonial sites, and sacred shrines on public and private properties. The process is focused on identifying issues of concern to Native American tribes, including cultural values, religious beliefs, traditional practices and legal rights of Indian people, and on defining the full range of acceptable alternatives.

Consultation is intended to accommodate religious considerations, rather than endorse them. The courts have ruled that consultation regarding issues of Native American religious importance is not a violation of the Establishment Clause of the U.S. Constitution.2

Effective consultation comes from the development of relationships that are ongoing and sustained. Improved relations with tribes can improve the effectiveness of consultation. A critical factor in the process is the understanding that consultation, in all forms, is an ongoing process rather than a single event.

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General requirements:
- Consultation is defined in Government Code Section 65352.4 as the “meaningful and timely process of seeking, discussing, and considering carefully the views of others...” Consultation involves conduct that is mutually respectful of all parties, recognizes all parties’ cultural values, incorporates the parties’ needs for confidentiality, and seeks agreement on the resolution of the concerns raised.
- Consultation should be done prior to the public review process and as early as possible.
- Consultation should be done face-to-face whenever possible and should not take place in a public forum.
- When an Agency or Department first seeks to consult on a project, its initial inquiry should be made to the tribe’s officially chosen leader. A department head or higher should make the initial request.
- Once the tribe has agreed to consult, consultation should take place between the Agency or Department’s designee(s) and a tribal representative(s) who has been identified through a letter from the tribe’s presiding officer or a Tribal Council resolution.
- Agency or Department officials should be cognizant of the fact that most tribes were relocated to isolated locations, far from city centers, busy highways, and from their territories of cultural affiliation. Travel required for consultation may be time-consuming and, in the case of tribes along the Colorado River, may involve changes in time zones. Agency or Department officials should seek to accommodate the tribe’s schedules and to share the burden of travel.
- Agency or Department officials should be aware that the confidentiality of many Native American cultural features is critical to tribal culture and that many tribes will seek confidentiality assurances prior to divulging information about those sites.

Conducting consultation:
- Consultation should be viewed as a process, rather than a single event and an Agency or Department should be prepared to continue consultation throughout the duration of a project.
- Simply notifying a tribe is not the same as consultation. A 1995 federal court ruling held that written correspondence requesting consultation with a tribe was not sufficient for the purpose of conducting consultation as required by law, but that telephone calls or more direct forms of contact may be required. In Pueblo of Sandia v. United States, 50 F.3d 856 (10th Cir. 1995), the court held that the U.S. Forest Service had not fulfilled its consultation responsibilities under the National Historic Preservation Act by merely sending letters to request information from tribes.
- Agency or Department officials should begin consultation with tribes at the earliest point possible in the project planning process.
- All attempts to contact a tribe regarding consultation should be well documented, including letters, telephone calls, and direct meetings. Any returned or unanswered correspondence should be retained in order to verify the Agency or Department’s efforts to communicate. Documentation of notification and consultation requests should be included in the Agency or Department’s public record.
- Agency or Department officials should be aware that tribes may require a significant period of time to respond to a consultation request.
  - Often tribal councils meet only once a month; all formal positions taken by the tribe will usually require approval of the tribal council.
• Agency or Department officials should be aware of the potential for vast differences in tribal governments’ capabilities (especially between federally-recognized and non-federally-recognized tribes), different tribes’ staffing capabilities, and resources. Some may be able to respond more promptly and efficiently than others.

• Agency or Department officials should be sensitive to the fact that many tribes are subject to numerous demands on their small staffs, including requirements of the federal, state, and Agency or Department.

• Consultation requests should include a clear statement of purpose, explaining the reason for the request and declaring the importance of the tribe’s participation in the project planning process. The request should specify the location of the project area of potential effect.

• Consultation requests should provide as much detail about the proposed plan as possible, presented in layman’s terms, including maps of the affected area and a description of the nature of anticipated impacts. Failure to disclose pertinent information may provide grounds for a legal challenge to the Agency or Department’s plan.

• Consultation should involve listening to tribal concerns with the goal of accommodating Native American religious practices.

• Consultation should produce enforceable results that reflect the efforts made to achieve a mutually agreeable outcome.

• All aspects of the consultation process should be documented, including how the agency reaches a final decision.

• Upon conclusion of consultation, the Agency or Department should notify all consulting tribes of the proposed decision, specifically discussing the basis for the decision, the relationship to tribal concerns, and outlining the process for tribes to challenge the draft plan prior to its final approval.

3. Procedures to identify tribes through the NAHC.

Consultation requires communicating directly with tribes. The NAHC’s role is to facilitate consultation and to provide assistance to tribes and an Agency or Department. The NAHC will provide contact information for all culturally affiliated tribes, including those with overlapping territories.

• When Agency or Department projects are first proposed, the Agency or Department should send written requests to the NAHC asking for a list of appropriate tribes in their area for consultation. The Native American Heritage Commission will provide the Agency or Department with a list of appropriate California Native American tribes comprised of federally-recognized and non-federally recognized tribes found on the NAHC’s consultation list. The appropriate groups will be those that have a cultural affiliation to a specific geographic area.

• Requests should include the specific location of the area proposed for development.

3 113 Yale Law Journal 1623, page 12
4. Consultation to address appropriate methods of treatment and management of cultural features.

- An Agency or Department should not ask tribes to prioritize sites for the purpose of protection.
- An Agency or Department should be prepared to consider a broad range of mitigation options, including avoidance, development of habitat and open space properties, or alternative means of preserving Native American cultural features intact whenever possible.
- An Agency or Department should be prepared to discuss tribal involvement in the treatment and management of cultural features through monitoring, co-management, and other forms of participation.
- The planning of treatment and management activities should address the possibility that Native American human remains may be involved when protecting cultural features. An Agency or Department should work with the tribe to identify and plan for appropriate treatment of such discoveries, in accordance with Public Resources Code Section 5097.98.

5. Procedures to protect confidentiality.

- Any information submitted by tribes must remain confidential and exempt from public disclosure laws, to the extent authorized by law.
- Procedures must be established to allow for tribes to share information with Agency or Department officials in a confidential setting, rather than requiring discussion in a public meeting.
- Agencies or Departments should develop their own “in-house” confidentiality procedures.
- Any documents or portions of reports specifically detailing the cultural feature or area proposed for protection by the tribe through an open space designation must be kept confidential.
- Only those tribal designees, Agency or Department officials, qualified archaeologists, and land managers involved in the particular planning activity may obtain information about a given site.
- The consulting parties may wish to develop their own criteria for the limited release of confidential information related to the site.
- Anyone requesting confidential site information from the Agency or Department should first provide identification and sign a nondisclosure agreement in conformance with existing law, and, if necessary, establish their “need to know.” Disclosure to any second parties must also be prohibited under terms of the nondisclosure agreement.

Terms for confidentiality may differ depending upon the nature of the site, the tribe, the Agency or Department’s mission, or who proposes to protect the site. The Agency or Department should collaborate with tribes to develop informational materials for field managers regarding the cultural sensitivity of divulging site information, explaining the tribe’s interest in maintaining the confidentiality and preservation of a site. Land managers should be informed that Public Resources Code Section 5097.993 establishes criminal penalties for the unlawful and intentional destruction, degradation, or removal of Native American cultural or spiritual places located on public or private lands.
Miscellaneous

- Agencies or Departments are encouraged to adopt policies or procedures, in consultation with the appropriate tribe(s), to protect Native American cultural features, to protect the confidentiality of information exchanged between the tribe and the Agency or Department regarding cultural features, to provide penalties for the unauthorized disclosure of confidential information, and for appropriate treatment and management of Native American cultural features.

- Agencies or Departments should consider development of preservation plans for cultural features within their jurisdictions in accordance with established cultural resource protection standards.

- The Agency or Department’s representative should be encouraged to attend Tribal Council or tribal planning meetings, where appropriate and when invited, in order to become familiar with tribal government operations and to facilitate relationship building.

- Consultation may include discussion of mitigation measures, including the preferred alternative of avoidance, as recommended in Section 15370 of the CEQA Guidelines.

- When the consulting tribe finds mitigation banking to be an acceptable form of mitigation for the loss of gathering/collecting areas, an Agency or Department may wish to consider land banking that fosters the development of permanently protected gathering and collection areas through transplantation, irrigation, or other means.

- Appropriate tribal governments and the Agency or Department should consider the benefits of recording protected sites with NAHC or CHRIS system, with designation to indicate that the site is Native American. Burial sites or sites of a sacred or spiritual value should be listed with the NAHC; sites of historic or prehistoric nature should be listed with the CHRIS.
PART 2:

NATIVE AMERICAN MONITORS, TRAINING AND PROFESSIONAL OPPORTUNITIES
Interested in working as a Native American Monitor? In recent years, many California Indians are introduced to the subject at hand by being asked to serve as “Monitors” on projects involving known or suspected archaeological sites being threatened by development or other proposed ground-disturbing activities. Information important to persons who may serve as Native American Monitors includes Guidelines (Items 2-1, 2-2), an example of a job position description (Item 2-5), basic field equipment list (Item 2-6), and examples of the kinds of daily record-keeping that may be required (Items 2-7 through 2-10).

Tribal representatives are increasingly called upon to consult and coordinate culture resource activity. Tribes are being asked to review and comment on a wide range of cultural resource concerns, including Environmental Impact Reports (EIRs, per CEQA) or Studies (EISs, per NEPA), Timber Harvest Plans (THPs) for their ancestral lands, and requests for information on cultural resources from archaeologists, planners or agencies.

Archaeology is an everyday activity in the State. Archaeological evidence infers that California was first settled at least 13,500 years ago—a time that reaches back time immemorial. By the time of sustained settlement by foreigners ca. 1850 (earlier along the coast occupied by the Spanish and Russians), California’s rich, diverse environment and climate sustained many different complex Indian cultures and the highest population density of any place in North America. It is no wonder then, that California’s archaeological record consists of untold thousands of sites—and that where people lived in the past, people often desire to live today. Thus, the rub—development often unearth Indian artifacts. But historic preservation laws are in place to help decide how to balance the potential conflicts between cultural resource preservation and modern land uses.

California has more CRM professionals than any other state in the Nation, largely in response to passage of historic preservation laws (Part 1), the State’s rapid growth, and its leadership in environmental protection since the late 1960s. Very few of these professionals are California Indians, who would undoubtedly bring valuable insights and lessons to the profession, be best suited to relate Native American cultural and traditional values to the greater populace, as well as promote better representation in meeting CRM goals for their kinfolk.

Finding common ground: preserving the past for present and future generations. California’s rich Indian heritage is not just a thing of the past, but is a precious part of a rich historical and cultural legacy to be nurtured and sustained for benefit of all future generations. Values that Indian people today associate with archaeological sites may be at odds with the scientists’ view. Places lacking archaeological indicators where Indian people have traditionally prayed, or may be associated with their origin stories and tribal histories, or collected plants, fished or hunted for foods and materials used for on-going ceremonials, traditional subsistence, making baskets, regalia and the like, may also be considered significant cultural resources, or traditional cultural properties (see Item 1-8).
Interested in designing and co-hosting a CRM Workshop for your tribe, organization or agency? Examples of introductory 1-to-4-day CRM workshops designed by the SCA Native American Programs Committee (NAPC) in partnership with and for several California Indian Tribes and organizations are included (Part 2-12 through 2-14). Essentially 'free-of-charge,' these workshops are supported mutually by the non-profit SCA and the collaborating Indian group for out-of-pocket costs. All instructor time and material preparation is provided gratis from NAPC members. Those interested in teaming with us to design and hold a workshop for their community are urged to contact the NAPC Chairperson, Janet Eidsness at (530) 629-3153.

Want more training or might you consider a career in CRM? For those who want more information or may wish to consider a more formal career track in CRM, various opportunities are available (Items 2-15 through 2-19). Example curricula and programs in California are provided for an AA/AS (2-year) degree offered by Community Colleges (Item 2-16), to the postgraduate MA degree in CRM from Sonoma State University (Item 2-17).

Other examples of specialized training -- from one-day classes to a week-long course -- are also provided (Items 2-18 through 2-19).
When developers and public agencies assess the environmental impact of their projects, they must consider "historical resources" as an aspect of the environment in accordance with California Environmental Quality Act (CEQA) Guidelines section 15064.5. These cultural features can include Native American graves and artifacts; traditional cultural landscapes; natural resources used for food, ceremonies or traditional crafts; and places that have special significance because of the spiritual power associated with them. When projects are proposed in areas where Native American cultural features are likely to be affected, one way to avoid damaging them is to have a Native American monitor/consultant present during ground disturbing work. In sensitive areas, it may also be appropriate to have a monitor/consultant on site during construction work.

A knowledgeable, well-trained Native American monitor/consultant can identify an area that has been used as a village site, gathering area, burial site, etc. and estimate how extensive the site might be. A monitor/consultant can prevent damage to a site by being able to communicate well with others involved in the project, which might involve:

1. Requesting excavation work to stop so that new discoveries can be evaluated;
2. Sharing information so that others will understand the cultural importance of the features involved;
3. Ensuring excavation or disturbance of the site is halted and the appropriate State laws are followed when human remains are discovered;
4. Helping to ensure that Native American human remains and any associated grave items are treated with culturally appropriate dignity, as is intended by State law.

By acting as a liaison between Native Americans, archaeologists, developers, contractors and public agencies, a Native American monitor/consultant can ensure that cultural features are treated appropriately from the Native American point of view. This can help others involved in a project to coordinate mitigation measures. These guidelines are intended to provide prospective monitors/consultants, and people who hire monitors/consultants, with an understanding of the scope and extent of knowledge that should be expected.

**DESIRABLE KNOWLEDGE AND ABILITIES:**

1. The on-site monitor/consultant should have knowledge of local historic and prehistoric Native American village sites, culture, religion, ceremony, and burial practices.
2. Knowledge and understanding of Health and Safety Code section 7050.5 and Public Resources Code section 5097.9 et al.
3. Ability to effectively communicate the meaning of Health and Safety Code section 7050.5 and Public Resources Code section 5097.9 et al. to project developers, Native Americans, planners, landowners, and archaeologists.

4. Ability to work with local law enforcement officials and the Native American Heritage Commission to ensure the return of all associated grave goods taken from a Native American grave during excavation.

5. Ability to travel to project sites within traditional tribal territory.

6. Knowledge and understanding of CEQA Guidelines section 15064.5 and Section 106 of the National Historic Preservation Act of 1966 (NHPA), as amended.

7. Ability to advocate for the preservation in place of Native American cultural features through knowledge and understanding of CEQA mitigation provisions, as stated in CEQA Guidelines section 15126.4(b)(A)(B), and through knowledge and understanding of Section 106 of the NHPA.

8. Ability to read a topographical map and be able to locate sites and reburial locations for future inclusion in the Native American Heritage Commission’s (NAHC) Sacred Lands Inventory.

9. Knowledge and understanding of archaeological practices, including the phases of archaeological investigation.

REQUIREMENTS:

1. Required to communicate orally and in writing with local Native American tribes, project developers, archaeologists, planners and NAHC staff, and others involved in mitigation plans.

2. Required to maintain a daily log of activities and prepare well written progress reports on any "findings" at a project site (i.e., human remains, associated grave goods, remains, bone fragments, beads, arrow points, pottery and other artifacts).

3. Required to prepare a final written report describing the discovery of any Native American human remains and associated grave goods, and their final disposition. This report shall contain at a minimum the date of the find, description of remains and associated grave goods, date of reburial, and the geographical location of reburial, including traditional site name if known. The report shall include a discussion of mitigation measures taken to preserve or protect Native American cultural features and, if applicable, a comparison with mitigation measures described in the environmental impact report. This report shall be submitted to NAHC after the completion of the project. Information from the report may be included in the NAHC Sacred Lands Inventory.

4. Ability to identify archaeological deposits and potential areas of impact.
EXPERIENCE:

It is recommended that each monitor/consultant have experience working with Native American cultural features under the guidance of an archaeologist that meets the professional qualifications, as defined in the Secretary of the Interior’s Standards and Guidelines for archaeology. Letters from an on-site archaeologist should be submitted with a copy of the archaeologist’s resume. Experience and knowledge regarding cultural, traditional, and religious practices can be gained by training from tribal elders. This experience and knowledge may be verified by the submission of such things as copies of contracts, reports, and letters from elders. Formal education in an appropriate field, such as anthropology, archaeology, or ethnology, may be substituted for experience.

PREFERENCE:

It is recommended that preference for monitor/consultant positions be given to California Native Americans culturally affiliated with the project area. These Native Americans will usually have knowledge of the local customs, traditions, and religious practices. They are also aware of the local tribal leaders, elders, traditionalists, and spiritual leaders. Since it is their traditional area being impacted, culturally affiliated Native Americans have a vested interest in the project.

Approved by the Native American Heritage Commission: 9/13/2005
Guidelines

Archaeological/Cultural Resource Monitor

Selecting a Monitor:

- one recommended by Tribe -
  Tribe should be an organized tribe either an aboriginal tribe
  or a Bureau of Indian Affairs established tribe;
- If no tribe available, than find an individual -
  Most Likely Descendant and/or Cultural Use Group of
  Site/Area/Territory;
- Person should be knowledgable of tribal customs/culture and tribal
  people.

Duties of Monitor:

- Person will be a liaison/messenger between archeaological project
  and tribal people;
- Monitor will have option to monitor only or get involved in arch project,
  except for reconnaissance where monitor will participate with
  field survey crew;
- While on project, monitor will be available to monitor or consultant
  at all project areas;
  * If projects are spread out, more than one monitor should be
  contracted or as many as necessary depending on the size of
  the project;
- While on project, monitor will be empowered to make decisions
  according to signed "Agreements" between tribal organizations and
  project coordinators.

Responsibilities of Monitor:

(On excavation sites - all phases)

- Survey outer areas of identified site;
- Double check perimeters of site boundaries;
- Insure investigations stay with-in realm of proposed "Phase of
  Archaeology;"
- Insure all state/federal policies are adhered to;
- Cease any operation and seek further consultation or advice from Tribe
  or Elders on matters not covered by "Agreements" or changes and abuses
  to "Agreements."
Responsibilities of Monitor Cont.:
(On reconnaissance projects)
- Insure investigations stay within realm of proposed archaeological methodology;
- Cease any operation and seek further consultation or advice from Tribe/Elders or County Planning Commission on matters which indicate shoddy or poor survey work by archaeological firm/team (*note - Monitor should first try to reconcile differences with crew supervisor before taking action).

Training of Monitor:
1 - 601-101/Video (archaeological)
2 - NAGPRA/FRRA/State & County & Health Policy
3 - California Archaeology
4 - Indians of the CA (or region)/Tribes & Territories
5 - Indian Philosophy
6 - Technician Duties/Phases of Archaeology
7 - Monitoring Responsibilities
8 - On Site visitations
9 - Lab/Museum care & curation
10 - On the Job/Field Class session

Developed by: Ron W. Goode, Archaeological Consultant, c. 1992
Eagle Eye Enterprises, 133 Sierra, Clovis, CA 93612
Chapter 3 Native American Cultural Studies

Section 3-3.10 Native American Monitors
The Native American Monitor is a liaison between Caltrans and the local Native American community with whom Caltrans may contract on a project by project basis to participate and obtain first hand knowledge of archaeological surveys, excavations, and construction in areas of potential or known cultural sensitivity to Native Americans. The Native American Monitor should be knowledgeable about his or her culture and its traditions, and be familiar with archaeological practices, federal and state laws, and regulations regarding Native American cultural concerns.

(Note that Caltrans is currently updating Chapter 3)
For Surface Inventory Projects on the Nevada Test and Training Range

Nellis Air Force Base (NAFB) remains committed to ensuring participation by Native Americans in archaeology and ethnographic compliance or research projects on the Nevada Test and Training Range. A compliance project is a result of efforts to identify, evaluate, and if necessary, mitigate adverse effects to cultural properties from the implementation of a federal action under Section 106 of the National Historic Preservation Act. Such projects include proposals to construct or expand targets, building mission-related facilities, creating or improving roads, or conducting any other surface disturbing action. Projects derived through Section 110, which are not called “compliance” in this context, include sampling surveys and research investigations.

This field guidance version reflects the expanded involvement that Monitors have gained in the NAFB program. Because one result of archaeologists and Monitors working together is that NAFB feels that Monitors should assume a more equal position of responsibility with Crew Leaders, especially when ensuring guidance actions are addressed.

A Monitor is defined as a Native American belonging to a Tribe with ancestral ties to the Nevada Test and Training Range, NAFB. A Crew Leader is the archaeologist designated by NAFB as having responsibility for completing the field assignment. The Crew Leader is generally an employee of a contracting company. Each section below implies an acceptance of responsibility by the Monitor to initiate and complete each task. It also implies responsibility by NAFB to ensure adequate and appropriate funding is provided for all Monitor-related tasks. A consultant is a Native American who is funded at $150 honorarium and costs to participate in interviews concerning their cultural past. All projects except for SRI will utilize consultants. Because they have increased duties as described above, monitors receive $175 per day and expenses. Consultants and monitors are designated by NAFB through consultation with tribes.

A Coordinator is selected at the Annual Meeting. The individual coordinates responses at Indian meetings, acts as lead for emergencies, and is a liaison between Native Americans and the Air Force. The role is dynamic and redefined year-to-year.

GOALS
1) Assist the Archaeologists in Presenting Accurate Indian Views: It is in the nature of humans to muse through memories, many fleeting, while observing features on a newly identified archaeology site. During her/his first encounter, the Monitor may be thinking it through. Yet, in past field sessions archaeologists literally replicate their exact words, which are translated into archaeology interpretations. In some situations the Monitor might need more time to reflect and discuss with others in the Tribe. While all types of interpretation by a Monitor are important, for archaeology research purposes I suggest it is the responsibility of the Monitor to ensure the archaeologist presents the Indian information in an appropriate manner. It will likely be necessary in many cases for the archaeologist to follow-up the conversation by a phone call to the Monitor. For example, what do you want your descendents to read when they review a report where you were identified as a Monitor?

2) Identifying Functions: The Monitor will assist field archaeologists and Air Force cultural resources personnel in identifying and describing cultural landscapes, and in interpreting the function and cultural sensitivity of archaeology sites.

3) Offer Realistic Ideas on Protection, Avoidance, Reconstruction, or Mitigation: Archaeologists and the NAFB commanders desire to protect features and areas of ancestral importance. Yet, national defense training will result in impacts, albeit minimal. Protection and avoidance concepts are welcomed from Monitors.

General Procedures

- Monitors will bless the area to purify the land prior to archaeological activities.

- The Monitor will identify and interpret culturally significant items to determine appropriate action, if necessary, and notify the tribes of the findings and recommended action via the final written report. The Monitor will ensure that the Crew Leader and the NAFB Archaeologist are notified concerning protection of items culturally significant to Native Americans.

- The Monitor will take efforts to ensure the archaeologists clearly understand the context of any comments incorporated into a report. This implies the Monitor review applicable sections of the draft report.

Laws, Regulations, and Reports

- Monitors will have familiarity with federal laws, statutes, and regulations pertaining to archaeological sites and culturally significant areas. If copies of laws are needed, or there are questions about legal interpretations, notify the Crew Leader, and, if there is no response, the NAFB Archaeologist.

- Monitors will observe activities and maintain field notes, photos, and journals. The Monitor must take efforts not to compromise sensitive information.
• Monitors are responsible for keeping the CGTO informed through the development of a comprehensive report to be submitted to the tribes at the conclusion of the activities. Monitors will take efforts to work with other Indian Monitors to consolidate information for composition in the final archaeology report.

Field Methods

• Monitors will receive and review study designs prior to the commencement of fieldwork. If a Monitor does not receive a study design, or if one feels there was not enough time allowed for review, the Monitor has a responsibility to notify the Crew Leader and ensure the NAFB Archaeologist is aware of the omission. Efforts will be taken to remedy the situation.

• In the beginning of a project, and subsequently when necessary, Monitors will present guidance to archaeologists, Air Force, and contracted personnel in the proper handling of artifacts. The methods to achieve this will be developed through discussion with the Crew Leader, NAFB, and the Monitor.

• The Monitor will receive instructions or guidance from NAFB and the Crew Leader in archaeology procedures and techniques as described in the study design reviewed by the tribes and approved by NAFB. While the primary goal of the Monitor is to assist in identifying and participating in plans for protection of sensitive resources, one may also accept archaeology crew tasks as needed and/or if desired.

• In areas where probing has been deemed necessary by NAFB, Monitors must notify the Crew Leader concerning potential impacts to sensitive features. The Crew Leader must immediately report to the NAFB Archaeologist the observations. NAFB will immediately enter into consultation with the Monitor and applicable parties. Probing will not be completed at this location until NAFB makes a determination.

• On identifying a burial site, Monitors assume a unique responsibility and must notify the Crew Leader who is required to discontinue work until the NAFB Archaeologist is notified. The Monitor will advise the CGTO of their findings, request guidance regarding appropriate mitigation, and assist in Air Force consultation.

Ethnographer's Involvement

The intent of NAFB is to increase the level of scientific accuracy for replicating information presented to archaeologists by Monitors. The following methods will be initiated. 1) An ethnographer recommended by NAFB (according to the terms of the contract) will be contracted for a reasonable number of hours to review the study design and provide comments. 2) In order to determine the level of ethnographer's involvement for that project, consultation will occur among NAFB, the ethnographer, a lead Monitor, and Crew Leader. 3) NAFB will make any further level of need. 5) The need for involvement will also be evaluated at the end of the project where it may be necessary for the anthropologist to assist in further interviews.
Qualifications and Maintenance

- Four Monitors from each ethnic group with alternates, as appropriate, will be appointed by the CGTO for selection by NAFB to act as field Monitor, with the approval of his/her respective tribe or organization.

- The Monitor will be required to present the following information to the Air Force to apply for a temporary security badge: name, social security number, tribal affiliation, and date and place of birth.

- The Monitor will possess an adequate level of general cultural knowledge and experience as determined by the CGTO and his/her respective tribe.

- The Monitor must have a basic knowledge of applicable regulations including but not limited to AIRFA, NAGPRA, NHPA, ARPA, etc.

- The Monitor must possess the skills to write informative reports.

- The Monitor must have a commitment to the completion of the project.

- The Monitor must be physically fit and capable of performing fieldwork in extreme weather conditions and participate in strenuous walks, if necessary.

- Honorarium, per diem, lodging, and travel will be provided to all Monitors for field time, document review, and report writing.

- The Monitor will be provided with field notes, site forms, and advance copies of draft reports. The Monitor will request the information early in the project.

- Monitors are required to notify NAFB of a desire to carry cameras, tape recorders, binoculars, and other sensitive electronic equipment. The Monitor must furnish model/make and serial numbers for each item to NAFB or the contractor. If an individual is unsure whether a particular item requires a separate pass, please err on the side of providing too much data.

- Monitors will be expected to write support documentation, with a level of assistance of Richard Arnold as provided by the Native American Interaction Program, to supplement archaeological reports.

- A briefing session with the Crew Leader and Monitors will be conducted prior to the commencement of work. Following requests to NAFB, a spiritual person and Monitors will be allowed to reconnoissance to project areas before the start of archaeological work and will be properly compensated. When feasible, primarily with large projects, a one-day orientation for new Indian Monitors will be conducted to include a meeting with the archaeology team and existing Indian Monitors along and a review of study designs.
Tasks for the Archaeology Crew Leader and Crew

- **Orientation:** The Crew Leader will take efforts to orient the Monitor on a new job, discuss the research design and methods, and allow time and space for the Indians to conduct their blessings. The Crew Leader will discuss with the Indian choices for participation (i.e., walk transects, walk alongside the group).

- **Data Gathering:** The Crew Leader and crew will take efforts to contemplate the Indian view. It is expected that the crew will have questions. If Monitors are uncomfortable providing information, note, but do not pursue the question.

- **Procedures:** Take efforts to ensure that procedures are explained to Monitors. When a site is located, describe the procedures and activities. When a probe unit is to be opened, invite the Monitor to observe. If a Monitor expresses misgivings or discomfort about any procedure, discuss and attempt to resolve. If a Monitor remains disturbed, discontinue the operation at that location. The Crew Leader is required to immediately contact the NAFB Archaeologist who will initiate discussion and consultation.
INTRODUCTION

In January 2001 following more than a year of environmental and cultural resource impact fact finding and analyses, the County of Santa Cruz Planning Commission issued conditional approval of the Church’s proposal to construct a private school campus and widen the Highway 152 frontage for safety reasons. The project area overlays a portion of CA-SCR-44/H, a recorded Native American archaeological site that also contains non-Native American historic period materials. In order to avoid careless desecration of Native American burials and prevent destruction of important information that may be present in the project area, an archaeological monitoring and data recovery plan was developed with Native American participation by the cultural resources team of Gary Breschini and Mary Doane of Archaeological Consulting, Bill Hildebrandt of Far Western Anthropological Group, and independent consultant Janet Eidsness. This plan includes participation of Ohlone descendants who have heritage ties to the Central Coast region as Native American Monitors. Development activities are expected to begin on April 15 and end on October 15, 2001. This document sets forth the desirable knowledge and abilities of Native American Monitor participants, and describes job requirements including discussion of roles and responsibilities. Based on recommendations from Ohlone consultants, our intent is to establish a “pool” of Native American Monitors who will be employed on a rotation basis to observe in-field cultural resource management activities during the 2001 phase of project developments that have the potential to uncover significant archaeological and sensitive Ohlone heritage resources. Participation of Native American Monitors in the St. Francis School project will provide opportunities for mutual exchange of information and understanding about Ohlone cultural values, the methods and benefits of archaeology in interpreting the past, applicable historic preservation laws and cultural resources management practices, and the dream of members of the local community who want their children to enjoy the benefits of schooling by the Salesians.

PREFERENCE

Preference for Native American Monitors will be given to persons of documented Ohlone descent who agree to serve in good faith as liaisons between all interested members and bands of the greater Ohlone Indian community, the cultural resources team (Archaeological Consulting, Far Western, Janet Eidsness), the project proponents (Diocese of Monterey and Salesians), construction contractor teams, and overseeing agencies (County of Santa Cruz and Caltrans).
In accordance with policy of the California Native American Heritage Commission (NAHC), a person who serves as a Native American Monitor on this project will not be recognized by the NAHC as the Most Likely Descendent (MLD), should Native American remains be discovered during project implementation.

**DESIRABLE KNOWLEDGE AND ABILITIES**

The following desirable knowledge and abilities are adopted for this project from the NAHC Guidelines for Monitors/Consultants of Native American Cultural, Religious, and Burial Sites (Final Approved 7/10/89).

- The on-site monitor/consultant should be familiar with and knowledgeable about local historic and prehistoric Native American village sites, culture, religion, ceremony and burial practices.

- Knowledge and understanding of, and ability to communicate meaning and facilitate implementation of Section 5097.98 of the California Public Resources Code and Section 7050.5 of the California Health and Safety Code (see Attachment 1).

- Ability to work with local law enforcement officials and the Native American Heritage Commission to ensure return of all associated grave goods taken from a Native American grave during excavation.

- Ability to read a topographical map and be able to locate for future inclusion into the NAHC Sacred Lands inventory sites that are discovered but not recorded and location of reburials.

- Knowledge of the techniques archaeologists use to collect on-site data, excavation, auger holes, trenches, shovel pits, controlled grid surface collections, etc. Prior monitoring experience is a plus, but is not required.

**POSITION REQUIREMENTS, ROLES AND RESPONSIBILITIES**

- Ability to identify archaeological deposits and potential areas of impact, and work with cultural resources team to preserve and protect burials and significant finds to extent practical. Native American Monitors and project archaeologists must work collaboratively to carefully observe and identify potentially significant archaeological finds and human remains in order to prevent destruction of important archaeological information and insensitive desecration of Native American remains should such be present in the work area. The Native American Monitor and the project archaeologists will have the authority to temporarily halt construction contractors’ ground-disturbing activities at the find locality of suspected or confirmed human remains and significant cultural features, to allow the cultural resource team to examine and identify the finds, assess their significance, and carry out treatment plan(s) as appropriate.
• Required to communicate orally and in writing with local Native Americans, project developers, archaeologists, planners, NAHC staff, and others involved in the mitigation plan. Must be willing to review project cultural resources reports and mitigation plan, in order to understand the legal context (CEQA) and requirements for protection of significant cultural resources at CA-SCR-44/H (these items will be made available).

• Expected to be on the job site and ready to work per your pre-assigned work schedule. Frequent tardiness and unexcused absences from work will not be tolerated. If you are unable to work according to your assigned schedule, you must notify the designated cultural resources team member as soon as possible so that arrangements can be made for an alternate.

• Required to maintain a daily log of activities and "findings" at a project site, (e.g., associated grave goods, skeletal remains, bone fragments, beads, arrow points, and other artifacts). The Native American Monitor Record Log with daily log sheets and other pertinent information will be provided for your use—all Native American Monitors will use the same Record Log for the sake of continuity. At the end of each day, this Record Log will turned over to a designated cultural resources team member, who shall reissue it the following work day to the assigned Native American Monitor for their record keeping. All Native American Monitors will have access to and may make copies to be held confidential (only available to those with need to know), of the Record Log book.

• Required to facilitate communications between the Most Likely Descendent (MLD) duly appointed by the NAHC under state law, the property owners (Salesians, Diocese) and cultural resources team. An MLD will only be appointed if there is a discovery of Native American remains on the project site. Under state law, the appointed MLD has the authority to make recommendations to the property owner concerning the treatment (e.g., examination, analysis) and disposition (e.g., reburial) of any discovered Native American skeletal remains and associated grave goods.

• Required to prepare a final written report describing the discovery of any Native American remains and associated grave goods and their final disposition. This report shall contain at a minimum the date of find, description of remains and associated grave goods, date of reburial, and place of reburial. The report shall include a discussion of mitigation measures taken to preserve or protect Native American cultural resources and if applicable a comparison with mitigation measures described in the environmental impact report. This report shall be submitted to NAHC within four weeks after completion of the project. Reburial information will be included in the Sacred Lands files.

• Must work in a safe manner as not to endanger yourself or others, and adhere to all job safety procedures. Required safety apparel and equipment for Native American Monitors includes: hard-soled work boots (no tennis shoes), long pants (no shorts), hardhat, bright orange safety vest.
For safety reasons, Native American Monitors must be in good physical condition (good vision, good hearing, able to be on your feet most of the day, and frequently squat and bend, be agile and able to move quickly out of the way of heavy equipment, etc.)

- Must not be under the influence of or use alcohol or drugs on the job.
- Tobacco smoking will not be permitted on the job in the work area, but only in designated areas during lunch and specified morning and afternoon breaks.
BASIC FIELD EQUIPMENT LIST

FOR NATIVE AMERICAN MONITORS PARTICIPATING IN
ARCHAEOLOGICAL SURVEYS OR EXCAVATIONS

✓ Sturdy boots with ankle support and soles that grab (canvas or tennis
shoes not recommended)—do not break in new boots on survey, it could
be hazardous to your feet! Wear wool socks, especially if cold and wet
conditions.

✓ Long pants (no shorts!) and layers of clothing, for example, t-shirt,
button-up cotton overshirt with collar, sweatshirt with hood, wind-
breaker, heavy sweater or coat (rain gear may substitute for latter)—think
about how you’ll carry extra clothes if you peel them off on survey!

✓ Hat, preferably with a full brim (not a baseball cap), and a bandana.
(Note: a hardhat and orange safety vest may be required on some
projects, especially when working around heavy equipment.)

✓ Sunscreen, bug repellant and basic first-aid (band aids, topical antiseptic
like Neosporin, moleskin for blisters, aspirin or ibuprofen), toilet paper or
Kleenex, any special medications you may need (do notify your Crew
Chief if you have a medical condition such as a severe allergic reaction to
bee stings, for example).

✓ Drinking water (the heaviest and most important item you’ll carry) and
food-snacks (carry in covered plastic containers or in ziplock baggies).

✓ Day-sized backpack, or a recycled hunting vest with lots of front pockets
and a big back pocket.

✓ Rain gear (seasonal)—can use big plastic garbage bags as substitute.

✓ Hand-held compass, writing paper with clipboard or notebook (take a
plastic bag to cover), pencils, small ruler or 3-m tape measure (preferably
showing both metric and standard feet & inches).
EXAMPLE
DAILY NATIVE AMERICAN MONITOR RECORD
St. Francis Central Coast Catholic High School Project (CA-SCR-44/H), Watsonville

Date: ____________________ Time Began: _____ Time Ended: ______
Monitor’s Name: __________________________________ Phone#: ___________
Address: __________________________________________________________

Project Information
Archaeological Team Principal Investigator: ______________ Field Director: __________
Field Technicians: __________________________________________________

Monitoring Observations
Equipment Used: □ Grader □ Backhoe □ Auger/Boring Other: ________________
Equipment Operator(s): ______________________________________________
Work Area(s) Examined: ______________________________________________
Tools Used to Examine Soils: □ Hoe □ Rake □ Trowel □ Shovel □ Screen Other ______
Depth of Trench(es) or Soil Exposure(s) Examined: _______________________
Artifacts Discovered: Yes ___ No ___ □ Prehistoric □ Historic □ Modern (less than 50 years)
□ Human Remains □ Flaked-Stone □ Ground-Stone □ Bone □ Shell □ Fire-Cracked Rock
□ Manuports □ Ceramics □ Glass □ Metal □ Concrete □ Lumber □ Other: __________
If human remains found, Who Called Coroner? _______________ Date: _____ Time: _____
Who Notified Project Leader at (831) XXX-XXXX? __________________________
Who Notified Native American Heritage Commission? ______________________
Describe Disposition of Human Remains at end of Work Day: ____________________________

Observations, Discussion of Findings, Methods, Issues Raised: ____________________________

Daily Monitoring Record
Soil Observations:  □ Midden  □ Possible Midden  □ Non-Midden  Midden Depth: _____ cm

Soil Stratigraphy (Describe layers by depth/thickness, color, texture, amount/size of rock, presence or absence of artifacts, etc.): ________________________________

Cultural Feature Descriptions (Note Provenience and Composition): ____________________________

Other Notes: ______________________________________

Names of Visitors and their Affiliations: ____________________________________________
California Archaeological Site Stewardship Program
Site Monitoring Report

Site.

Date and time of monitoring.

Name. ____________________________
Address. ____________________________
Phone. ____________________________

Accompanied by (name and address).

Condition of archaeology site. (State if clear, damaged, overgrown, or vandalized. Describe any damaged areas. Attach sketches, maps, or photographs.)

Condition of trails (State if clear, obstructed, overgrown, or damaged).

Evidence of human intervention at site, such as footprints, trash, fire. (Do not touch or disturb—just note it. Write "none" if no evidence—do not leave blank.)
Observation of human activity at site. (Do not make contact or attempt to chase off individuals. Provide description of individuals, their activities, and where they were doing it. Note license plates of vehicles at trailhead or campsites.)

Describe location from which you observed the activity.

What steps did you take to notify law enforcement, BLM Field Officer, or others?

Other significant activity or problems that you encountered while monitoring.

Comments and suggestions.

Signed. Date.
## Archeological Site Management Data

<table>
<thead>
<tr>
<th>Site number</th>
<th>Field site number</th>
<th>State</th>
<th>County</th>
</tr>
</thead>
</table>

Management agency

Utm zone Utm coordinates: north east

Type of site (midden, mound, etc.)

Site dimensions: long axis orientation short axis orientation maximum depth

Admitted to the National Register Determined eligible for the National Register

Describe the location and environmental setting of the site (shoreline, riverbank, field, etc.)

Artifact classes in site

Is resource loss imminent? yes no

Estimated immediacy of loss

Estimated rate of loss (feet/year, etc.)

Percentage and type of ground cover: % grasses % bushes % trees other

Causes of adverse impact: agricultural development public use sheet erosion shoreline erosion vandalism looting timber harvesting off-road vehicles jet ski cyclical inundation

If agricultural identify primary crops and type of agriculture (row crops, drilled, no till, etc.)

If development, describe

---

**SAMPLE**
If public use, describe ________________________.

If sheet erosion, describe ground surface and indicate direction of source of water ________________________.

If shoreline or stream bank erosion, specify:

- primary cause of erosion
  - current ______ waves
  - primarily wind generated
  - primarily boat generated
  - primarily primary waves
  - combination primary and rebound waves

- estimated equilibrium slope ______
- soil type: ______ sands
  - ______ gravel
  - ______ unconsolidated
  - ______ clay
  - ______ other

- wave fetch direction ______
- length of wave fetch ______
- prevailing wind direction ______

If vandalism, describe types of activities ________________________.

If looting, describe extent ________________________.

If timber harvesting, identify impacts: ______ timber cutting ______ skidder tracks ______ staging area ______ haul roads ______

If off road vehicles, describe type of impact and type of vehicles, and frequency of intrusion ________________________.

If cyclical inundation, indicate frequency and maximum depth of water ________________________.

Map site location to scale, including section, township, range, and quad [attach]
<table>
<thead>
<tr>
<th>Adverse impact</th>
<th>Comments or description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development</td>
<td>Describe</td>
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<tr>
<td>Public use</td>
<td>Describe</td>
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<tr>
<td>Sheet erosion</td>
<td>Describe ground surface and indicate direction of water source.</td>
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<tr>
<td>Shoreline/streambank erosion</td>
<td>Primary causes</td>
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<td>__ current __ waves</td>
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<td></td>
<td>__ primarily wind generated</td>
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<td>__ primarily boat generated</td>
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<td>__ combination primary and rebound waves</td>
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<td>gravels</td>
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<td>unconsolidated</td>
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<td></td>
<td>clay</td>
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<td></td>
<td>other</td>
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<tr>
<td>Vandalism</td>
<td>Describe</td>
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<td></td>
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<tr>
<td>Looting</td>
<td>Describe extent</td>
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<tr>
<td>Timber harvesting</td>
<td>Off-road vehicles</td>
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<td></td>
<td>__ timber cutting __ skidder tracks __ staging areas __ haul roads</td>
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<td></td>
<td>Describe type of vehicle, impact, and frequency of intrusion.</td>
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<td></td>
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<tr>
<td>Jet ski</td>
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<tr>
<td>Cychlcal inundation</td>
<td>Indicate frequency and maximum depth of water.</td>
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</tbody>
</table>

Map site location to scale, including section, township, range, and quad (attach)
State of California — The Resources Agency

DEPARTMENT OF PARKS AND RECREATION
ARCHAEOLOGICAL SITE CONDITION
ASSESSMENT RECORD (ASCAR)

County: _____________________ District: _____________________ Park Unit: _____________________

Site Name and Other Site Nos. (If any):

Calif. Register Status (check one): Ineligible Potentially Eligible Eligible Listed Undetermined
Nat. Register Status (check one): Ineligible Potentially Eligible Eligible Listed Undetermined
(Note: If Listed, check others that apply: _______ Part of NRD ______ NHL ______ HABS ______ HAER ______ SHL ______ CPHI ______ CP)
Site Type: Rock Enclosure Time Period (check one): Prehist. Hist. Both
Name of Monitor: _____________________ Date of Monitoring: _____________________
Date of Last Evaluation: _____________________ Date of Last Site Record: _____________________ *
Site Relocation Status (check one): _______ Relocated _______ Not Relocated _______ Site Destroyed

* Note: If site record is 5 years or older, complete a Primary Record Form (DPR 523) to update site information along with the assessment form (cf. PRC 5024.1(g)(4)). Also, place a datum on the site and take photos from this location as a reference point for future monitoring.

Overall Site Condition Damage Assessment:

_____ None (no damage) _____ Slight _____ Light _____ Moderate _____ Moderately Heavy _____ Heavy _____ Not Rated
Comments on Condition:

Photos (list roll and number):
State Archaeologist comments/recommendations:

State Archaeologist Reviewer: _____________________ Date: _____________________

DPR ASCAR Form 09/28/05
## Disturbances and Intensity of Impact

(If present, use a check mark for all that apply; then check the amount of impact intensity for these disturbances)

<table>
<thead>
<tr>
<th>Type of Impact</th>
<th>Check If Present</th>
<th>Intensity of Impact for the Entire Site</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>None (1-10%)</td>
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<td></td>
<td></td>
<td>Slight (10-25%)</td>
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<td>Mod. (26-50%)</td>
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<td>Mod. Heavy (51-75%)</td>
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<td>Heavy (&gt;75%)</td>
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<tr>
<td>Animal Damage</td>
<td>Burrowing animals</td>
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<td></td>
<td>Other (indicate in comments)</td>
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<tr>
<td>Overall Animal Impact</td>
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<tr>
<td>Erosion and Other Geothermal Processes</td>
<td>Arroyo Downcutting</td>
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<td>Coastal Erosion</td>
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<td></td>
<td>Earthquake Damage</td>
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<td>Eolian Deposition</td>
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<td></td>
<td>Flooding</td>
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<td></td>
<td>Gullies, Rills, and Sheetwash</td>
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<tr>
<td></td>
<td>Riverine Erosion</td>
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<td>Slumping</td>
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<td>Prescribed burns</td>
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<td>Overall Fire Impact</td>
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<td>Park Construction</td>
<td>Buildings and Other Structures</td>
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<td>Sewer Lines</td>
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<td>Trails (New Construction)</td>
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<td>Overall Construction Impact</td>
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</table>
State of California — The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
ARCHAEOLOGICAL SITE CONDITION
ASSESSMENT RECORD (ASCAR)

Disturbances and Intensity of Impact (Continued)
(If present, use a check mark for all that apply; then check the amount of impact intensity for these disturbances)

<table>
<thead>
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<th>Type of Impact</th>
<th>Check If Present</th>
<th>Intensity of Impact for the Entire Site</th>
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<td>Slight (1-10%)</td>
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<td>Park Maintenance</td>
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<tr>
<td>Trash Removal/Raking</td>
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<td>Trenching</td>
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<tr>
<td>Vegetation Cutting/Raking</td>
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<td>Park Visitor Use (on the site)</td>
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<td>Camping (non-developed)</td>
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<tr>
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<td>Hiking</td>
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<td>Picnicking</td>
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<td>Trash Disposal (Littering, etc.)</td>
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<td>Trails and Related Disturbances</td>
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<td>Mountain Bike &amp; Similar Trails</td>
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<td>Off-Road Vehicle Tracks</td>
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<td>Volunteer Trails</td>
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<td>Other (indicate in comments)</td>
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<td>Bedrock Mortar Destruction</td>
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<td>Other (indicate in comments)</td>
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<td>Overall Vandalism Impact</td>
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State of California — The Resources Agency
DEPARTMENT OF PARKS AND RECREATION
ARCHAEOLOGICAL SITE CONDITION
ASSESSMENT RECORD (ASCAR)

County: ____________________ District: ____________________ Park Unit: ____________________

Comments on Disturbances (if needed):

Proposed Future Actions Required for Site Management and/or Protection

- Placement of Protection Signs and/or Interpretative Signs
- Notify Park Rangers and Other Park Staff to Patrol Site
- Close Area and/or Restrict Access
- Fence Construction Around Site
- Monitor Park Construction and Maintenance
- Test Excavation
- Full-scale Excavation (Data Recovery)
- Include in Resource Management Program
- Include in Site Stewardship Program
- Other (indicate below)

Comments on proposed future actions (if needed):

Estimated No. of Person Hours to Complete ASCAR Form (include Travel Time): ____________
NATIVE AMERICAN MONITOR
TRAINING PROGRAM

For the Level 3 Communications
Fiber Optic Project In California

Sponsored by

Level(3)™
COMMUNICATIONS
Biographical Sketches

Howard Higgins received his BA in 1972 from Princeton and his Ph.D. in 1982 from the University of New Mexico. At TRC, he serves as a Vice-President in charge of the Southwest Region. Dr. Higgins has over 25 years of training and experience working in both archaeology and ethnographic and Native American consultation. For the past 18 years, he has served at the Principal Investigator level or higher for projects in Texas, New Mexico, Arizona, Oklahoma, Colorado, and California.

David White has a Ph.D. from Southern Methodist University (1977). He studied both archaeology and cultural anthropology. Dr. White was staff anthropologist for the Southern California Edison Company from 1978-1992. He has worked with more than two dozen California Indian tribes. In 1992, he formed a small consulting company, Applied Cultural Dynamics, based in Santa Fe, New Mexico. Dr. White's clients include utility companies, federal agencies and Indian tribes.

Chris Lintz is the cultural resource program director for the Austin Branch Office of TRC. He earned his M.A. (1975) and Ph.D. (1984) from the University of Oklahoma, and is a member of the Register of Professional Archaeologists. Over the past 35 years, he has directed and participated in archaeological projects mainly in Arizona, California, Colorado, Oklahoma, Nevada, New Mexico, Texas, and Wyoming. He has conducted projects on reservation lands of the Paiute, Navajo, Choctaw, Apache Tribe of Oklahoma, Comanche, Delaware, and Alabama-Coushatta.

Larry Myers has been Executive Secretary of the Native American Heritage Commission since 1987. Mr. Myers is a California Native American of the Pinoleville Rancheria Pomo.

Dwight Dutschke is Native American Heritage Coordinator with the California Office of Historic Preservation, in charge of review on projects involving state-owned property. Mr. Dutschke has been with the OHP for 22 years. He is a member of the Ione Band of Miwoks and the Sierra Native American Council.
Index

Introduction................................................................................................................ 1

Cultural History and Overview..................................................................................... 3

The Legal Basis.............................................................................................................. 8

Role of Archaeology..................................................................................................... 17

Role of the Native American Monitor.......................................................................... 31

Code of Conduct for Native American Monitors....................................................... 33

Safety and Construction.............................................................................................. 35

Appendix
A. Sources of Information
B. Acknowledgements
C. Glossary of Terms
D. Forms
E. Guidelines for the Respectful and Dignified Treatment of Human Remains

This material contained in this document may not be duplicated or disclosed to third parties without the written consent of Level 3 Communications. This restriction does not limit the right to use the information contained in this document if it is obtained from another source without restriction.
1. Introduction

BACKGROUND AND OVERVIEW

Level 3 Communications is a communications company that is installing a nationwide fiber optics network to provide high-quality electronic communication capabilities and plans to install in excess of 2,600 miles of fiber optics line within the state of California.

Level 3 Communications is licensed in California by the California Public Utilities Commission (CPUC). The CPUC requires a variety of mitigation measures to protect natural and cultural resource values for this project within the state of California. Protection of cultural resource values is guided by a document known as "Long Haul Fiber Optics Project Cultural Resources Procedures," for the Level 3 Communications Fiber Optics Project, dated July, 1999 and approved by CPUC. Included in the Cultural Resource Procedures are various measures designed to identify cultural resources, including prehistoric and historic archaeological sites and areas of particular concern to California Indian people.

During consultation with California Indian people, Level 3 Communications learned of their deep concern for their cultural heritage and their interest in actively participating in the monitoring of construction work in potentially sensitive areas. At the same time, some people who are interested in monitoring have little or no experience in such activities. In consultation with the California Native American Heritage Commission and the California Office of Historic Preservation, Level 3 Communications has developed this Monitor Training Program.

CULTURAL RESOURCES

Cultural resources relate to remains and sites associated with human activities and include the following:

- Locations of human remains
- Elements or areas of the natural landscape which have a traditional religious and/or cultural significance
- Prehistoric and ethnohistoric Native American archaeological sites
- Historic archaeological sites
- Historic buildings

GOALS OF THE TRAINING COURSE

The Native American Monitor Training Program for the Level 3 Communications Fiber Optic Project in California is designed to provide an overview of archaeological and Native American monitoring, both in general terms and especially as it pertains to the Level 3 Communications Fiber Optic Project.
1. Introduction

Discussion will provide insight to four different perspectives which must be brought together in order to broadly satisfy the needs of the company while also providing for protection of cultural resources. These perspectives are represented by:

- California Indian groups and individuals
- Regulatory agencies
- Archaeologists
- Level 3 Communications

OBJECTIVES

- Native American monitors are not expected to be archaeologists, but need a basic understanding of archaeological evidence and how archaeologists think about the evidence in order to be effective.

- It is also important for Native American monitors to learn as much as possible about their own history and traditions, both in regard to their specific tribal background and in regard to broader national concerns of American Indian people.

- It is important for Native American monitors to understand the methods and techniques of fiber optic construction, the potential impacts of construction, and the various ways in which construction can be modified in order to minimize or prevent damage to cultural resources.

- The Native American Monitor Training Program is intended to provide an introductory overview of these issues. Level 3 Communications hopes it will be helpful to a fairly broad audience, providing a general understanding of the process to people who have not participated in monitoring before, as well as contributing some new perspectives to people who have prior experience in monitoring on other projects.
2. Cultural History and Overview

THE PALEO-INDIAN PERIOD

- 15,000 to 11,000 years ago
  - People arriving in North & South America via the Bering Land Bridge; sea levels 300' lower than at present; perhaps an ice-free corridor in the center of North America and perhaps by travel along the coast
  - A number of sites in California have produced early dates but many of these may be in error; most sites in coastal areas are deeply buried; artifacts most often found on dry lake beaches and other deflationary surfaces
  - People lived by hunting big game: mammoths, bison, camels, horses and ground sloths, and used small game and plant foods only to a limited extent
  - People lived in small groups that were highly mobile
  - Tools were of a few generalized types, which could be used for multiple purposes; most were made of chipped stone, with perhaps some bone tools; “fluted” points may be late Paleo-Indian
  - Only a few occupation sites have been found; most sites are stone tool workshops or butchering stations, and otherwise the period is mostly represented by isolated artifacts
  - Only six potential Paleo-Indian burials have been found in California.

THE ARCHAIC PERIOD

- 11,000 to 4,000 years ago
  - People slowly began to exploit new ecological niches, develop more specialized technologies, and pursue more diffuse economies
  - People learned specialized techniques for exploiting chaparral environments, coastal resources, inland woodland/grassland areas, mountain conifer zones, and other environments
  - Instead of relying on a few large game species, people shifted to dependence on dozens of animal species and hundreds of plant species
Seasonally moving from one environment to another was often an important part of survival (for instance, spending summers in the coniferous zone, spring and fall in transitional foothills, and winter in the valleys).

Basketry was an important innovation.

Ground-stone tools were another important innovation.

Manos and milling stones were used for grinding hard seeds.

Shell mound sites appear for the first time.

More substantial architecture is occasionally found, and because people were living in base camps for months at a time, formal burial grounds appear.

With the growing focus on local resources, regional cultures developed.

Evidence of trade appears in the Late Archaic, with movement of seashells, steatite, and obsidian.

Communities appear to have been egalitarian, with little difference in social status among residents.

THE PACIFIC PERIOD

Not all archaeologists distinguish between the Archaic and Pacific periods, preferring to deal with many local sequences instead.

4,000 to 500 years ago (actually, for some parts of California, lasting until 150 or fewer years ago).

Maritime resources take on a new level of importance; in general, cultural patterns become more specialized or refined.

Regional cultures developed greater dependence on certain resources, for instance, acorns in some areas, and seafood in other areas; food storage became very important, as did cooperative group labor.

Technological advances included use of the bow and arrow, sea-going canoes, and fish dams.

Mortars and pestles reflect intense use of acorns.

Settlements became more permanent, and larger; differences in wealth, prestige and social status appear, reflected in houses of different sizes and in burial goods.
2. Cultural History and Overview

- Architecture became diverse, including not only residential houses but also huge subterranean dance houses, and a variety of structures including seclusion huts, sweat houses, ramadas, and graneries.

- Trade networks became highly elaborated; California seashells have been found in New Mexico, and Catalina steatite in the Great Basin in Nevada and Utah; shell beads constituted a true money system.

- Special types of sites include rock art sites, ritual sites, rock alignments and astronomical sites, quarry sites for obsidian and other materials, and trading sites.

THE HISTORIC PERIOD

- Beginning with sporadic contacts in 1539-40 (Francisco de Ulloa) and continuing with Juan Rodriguez de Cabrillo (1542-43) and Sir Francis Drake (1579), early exploration ended in 1602 with a voyage by Sebastian Vizcaino.

- Possibly stimulated by Russian explorations to the north, Spanish interest in California was renewed in the late eighteenth century. Missionization began in 1769; by the end of 1773 there were five missions plus the presidios at San Diego and San Francisco; eventually there would be twenty-one, plus another presidio at Monterey and pueblos (farm settlements) such as San Jose and Los Angeles.

- The Mission era radically altered and disrupted the lives of California Indian people; missions had both direct and indirect effects.

- 1821-1846: the Mexican Period; Missions were abandoned, and California shifted to a ranching economy.

- 1846: the Bear Flag Revolt and the Mexican-American War initiated the American Period; the Gold Rush beginning in 1849, and subsequent waves of American settlement had enormous impacts on California Indian people in the foothills and central valley area with decimation of some groups.

CULTURAL SITES

Prehistoric sites represent the material remains of Native American societies and their activities before the arrival of Europeans. Ethnohistoric sites are defined as Native American settlements occupied after the arrival of European settlers in California. Such sites include villages, seasonal camps, stone tool quarries, hunting and butchering locations, traditional trails, and places with rock carvings or paintings.
Areas of traditional cultural significance are areas which have been, and often continue to be, of economic and/or religious significance to peoples today. They include Native American sacred areas where religious ceremonies are practiced or which are central to their origins or identity as a people. They also include areas where Native Americans gather plants or animals for food, medicinal, or economic purposes. A certain measure of protection is provided for such resources by California State Law.

NATIVE AMERICAN CULTURAL RESOURCES CAN BE DIVIDED INTO THREE CATEGORIES:

1. Native American skeletal remains and grave-related artifacts

Different types of burials may occur in one geographic area inhabited by the same tribal group, especially if it was inhabited over an extended period of time. There is no way to generalize about the burial practices of California Native Americans; the probability of discovering remains and methods for preventing or minimizing disturbance of burials must be evaluated individually for each location.

2. Traditional cultural places and religious or spiritual sites

Such as villages, campsites, gathering and harvesting areas, quarries, tool manufacturing areas, rock painting and carving areas, and burial grounds. Traditional locations for events or rites with spiritual significance. A danceground, dream trail, a place for gathering traditional medicine items, or a place for an Indian doctor or shaman to gather strength might be a spiritual site. It could be a prominent peak, a rock formation, a spring, a quiet glen, or a cave.

3. Archaeological sites and artifacts

Cultural remains left by past peoples. Artifacts often found in California may be made of fish or animal bone, shells of sea animals, stone or wood.

CALIFORNIA DIVERSITY

- What we know about the diversity of California Indian people comes both from historical information and from archaeology (including oral history)

- California Indian people were physically diverse: for example, the Mojave are the tallest Indians in North America, and the Yuki are the shortest

- California Indian people spoke nearly 100 different languages
The study and preservation of California's Native American cultural resources are important to all Californians.

Both state and federal governments have recognized the importance of protecting our cultural resources since the beginning of the century. States across the nation (including California) have enacted laws designed to protect these resources for today's and future generations.
3. The Legal Basis

FOR THE PRESERVATION AND PROTECTION OF NATIVE AMERICAN REMAINS AND ASSOCIATED GRAVE GOODS

STATE LAWS

• CEQA
• California Public Resource Code
• California Health and Safety Code
• Native American Heritage Act

FEDERAL LAWS

• Antiquities Act (1906)
• National Historic Preservation Act (1966, amended 1992)
• American Indian Religious Freedom Act (1978)
• Archaeological Resource Protection Act (1979)
• Native American Graves and Repatriation Act ("NAGPRA", 1990)

A variety of laws and regulations exists that are designed and enforced to ensure the continued protection of heritage and cultural resources.

The following excerpts from California law concerning Native American human remains are provided for your reference:

From Chapter 1492, Statutes of 1982, which added Section 7050.5 to the Health and Safety Code, amended Section 5097.94 of the Public Resources Code and added Sections 5097.98 and 5097.99 to the Public Resources Code:

(a) The Legislature finds as follows:
   (1) Native American human burials and skeletal remains are subject to vandalism and inadvertent destruction at an increasing rate.
   (2) State laws do not provide for the, protection of these burials and remains from vandalism and destruction.
   (3) There is no regular means at this time by which Native American descendents can make known their concerns regarding the treatment and disposition of Native American burials, skeletal remains, and items associated with Native American burials.

(b) The purpose of this act is:
   (1) To provide protection to Native American human burials and skeletal remains from vandalism and inadvertent destruction.
   (2) To provide a regular means by which Native American descendents can make known their concerns regarding the need for sensitive treatment and disposition of Native American burials.
American burials, skeletal remains, and items associated with Native American burials.

From **Section 7050.5** of the Health and Safety Code:

(b) In the event of discovery or recognition of any human remains in any location other than a dedicated cemetery, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains until the coroner of the county in which the human remains are discovered has determined, in accordance with Chapter 10 (commencing with Section 27460) of Part 3 of Division 2 of Title 3 of the Government Code, that the remains are not subject to the provisions of Section 27491 of the Government Code or any other related provisions of law concerning investigation of the circumstances, manner and cause of any death, and the recommendations concerning the treatment and disposition of the human remains have been made to the person responsible for the excavation, or to his or her authorized representative, in the manner provided in Section 5097.98 of the Public Resources Code. The coroner shall make his or her determination within two working days from the time the person responsible for the excavation, or his or her authorized representative, notifies the coroner of the discovery or recognition of the human remains.

(c) If the coroner determines that the remains are not subject to his or her authority and if the coroner recognizes the human remains to be those of a Native American, or has reason to believe that they are those of a Native American, he or she shall contact, by telephone within 24 hours, the Native American Heritage Commission.

From **Section 5097.94** of the Public Resources Code:

The commission shall have the following powers and duties:

(k) To mediate, upon application of either of the parties, disputes arising between property proponents and known descendents relating to the treatment and disposition of Native American human burials, skeletal remains, and items associated with Native American burials. The agreements shall provide protection to Native American human burials and skeletal remains from vandalism and inadvertent destruction and provide for sensitive treatment and disposition of Native American burials, skeletal remains, and associated grave goods consistent with the planned use of, or the approved project on, the land.

(l) To assist interested property proponents in developing agreements with appropriate Native American groups for treating or disposing, with appropriate dignity, of the human remains and any items associated with Native American burials.

From **Section 5097.98** of the Public Resources Code:

(a) Whenever the commission receives notification of a discovery of Native American human remains from a county coroner pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, it shall immediately notify those persons it believes to be
most likely descended from the deceased Native American. The descendants may, with
the permission of the owner of the land, or his or her authorized representative, inspect
the site of the discovery of the Native American remains and may recommend to the
owner or the person responsible for the excavation work means for treating or disposing,
with appropriate dignity, the human remains and any associated grave goods. The
descendants shall complete their inspection and make their recommendations within 24
hours of their notification by the Native American Heritage Commission. The
recommendation may include the scientific removal and nondestructive analysis of
human remains and items associated with Native American burials.

(b) Whenever the commission is unable to identify a descendent, or the descendent identified
fails to make a recommendation, or the landowner or his or her authorized representative
rejects the recommendation of the descendent and the mediation provided for in
subdivision (k) of Section 5097.94 fails to provide measures acceptable to the landowner,
the landowner or his or her authorized representative shall reinter the human remains and
items associated with Native American burials with appropriate dignity on the property in
a location not subject to further subsurface disturbance.

From SB 447 (Chapter 404, Statutes of 1987):

On January 1, 1988, Senate Bill 447 went into effect. This legislation amended Section 5097 of
the Public Resources Code, making it a felony to obtain or possess Native American remains or
associated grave goods:

(a) No person shall obtain or possess any Native American artifacts or human remains which
are taken from a Native American grave or cairn on or after January 1, 1984, except as
otherwise provided by law or in accordance with an agreement reached pursuant to
subdivision (1) of Section 5097.94 or pursuant to Section 5097.98.

(b) Any person who knowingly or willfully obtains or possesses any Native American
artifacts or human remains which are taken from a Native American grave or cairn after
January 1, 1988, except as otherwise provided by law or in accordance with an agreement
reached pursuant to subdivision (1) of Section 5097.94 or pursuant to Section 5097.98, is
guilty of a felony which is punishable by imprisonment in the state prison.

(c) Any person who removes, without authority of law, any Native American artifacts or
human remains from a Native American grave or cairn with an intent to sell or dissect or
with malice or wantonness is guilty of a felony which is punishable by imprisonment in
the state prison.

From Public Resources Code, Section 5020

This state code created the California Historic Landmarks Committee in 1939, and authorized the
Department of Parks and Recreation to designate Registered Historical Landmarks and
Registered Points of Historical Interest.

5020.1 Definitions.

As used in this article:

(a) “California Register” means the California Register of Historical Resources.
3. The Legal Basis

(b) "Certified local government" means a local government that has been certified by the National Park Service to carry out the purpose of the National Historic Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.) as amended, pursuant to Section 101(c) of that act and the regulations adopted under the act which are set forth in Part 61 (commencing with Section 61.1) of Title 36 of the Code of Federal Regulations.

(c) "Commission" means the State Historical Resources Commission.

(d) "Department" means the Department of Parks and Recreation.

(e) "Director" means the Director of Parks and Recreation.

(f) DPR Form 523" means the Department of Parks and Recreation Historic Resources Inventory Form.

(g) "Folklife" means traditional expressive culture shared within familial, ethnic, occupational, or regional group and includes, but is not limited to, technical skill, language, music, oral performance, and are generally maintained without benefit of formal instruction or institutional direction. However, "folklife" does not include an area or a site solely on the basis that those activities took place in that area or on that site.

(h) "Historic district" means a definable unified geographic, entity that possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development.

(i) "Historical landmark" means any historical resource which is registered as a state historical landmark pursuant to Section 5021.

(j) "Historical resource" includes, but is not limited to, any object, building, structure, site, area, place, record, or manuscript which is historically or archaeologically significant, or is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California.

(k) "Local register of historical resources" means a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution.

(l) "National Register of Historic Places" means the official federal list of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture as authorized by the National Historic Preservation act of 1966 (16 U.S.C. Sec. 470 et seq.).

(m) "Office" means the State Office of Historic Preservation.

(n) "Officer" means the State Historic Preservation Officer.

(o) "Point of historical interest" means any historical resource which is registered as a point of historical interest pursuant to Section 5021.

(p) "State Historic Resources Inventory" means the compilation of all identified, evaluated, and determined historical resources maintained by the office and specifically those resources evaluated in historical resource surveys conducted in accordance with criteria established by the office, formally determined eligible for, or listed in, the National Register of Historic Places, or designated as historical landmarks or points of historical interest.

(q) "Substantial adverse change" means demolition, destruction, relocation, or alteration such that the significance of an historical resource would be impaired.
5024. State-owned Historical Resources; policies to preserve; master list; documentation.

(a) On or before January 1, 1982, each state agency shall formulate policies to preserve and maintain, when prudent and feasible, all state-owned historical resources under its jurisdiction listed in or potentially eligible for inclusion in the National Register of historic Places or registered or eligible for registration as a state historical landmark pursuant to Section 5021. The State Historic Preservation Officer shall provide such agencies with advice and assistance as needed.

(b) On or before July 1, 1983, each state agency shall submit to the State Historic Preservation Officer an inventory of all state-owned structures over 50 years of age under its jurisdiction listed in or which may be eligible for inclusion in the National Register of Historic Places or registered or which may be eligible for registration as a state historical landmark. State-owned structure in freeway rights-of-way shall be inventoried before approval of any undertaking which would alter their original or significant features or fabric, or transfer, relocate or demolish those structures.

(c) The State Historic Preservation Officer, with the advice of the State Historical Resources Commission, shall establish standards, after consultation with agencies to be affected, for the submittal of inventories and development of policies for the review of historic resources identified pursuant to this section. These review procedures shall permit the State Historic Preservation Officer to determine which historical resources identified in inventories meet National Register of Historic Places and state historical landmark criteria and shall be placed in the master list of historical resources.

(d) The State Historic Preservation Officer shall maintain a master list comprised of all inventoried structures submitted and determined significant pursuant to this section and all state-owned historical resources currently listed in the National Register of Historic Places or registered as a state historical landmark under state agency jurisdiction. The State Historic Preservation Officer shall inform agencies with historical resources on the master list of current sources of funding for preservation activities, including rehabilitation and restoration.

(e) On or before July 1, 1984, and annually thereafter, each state agency shall submit inventory updates to the State Historic Preservation Officer and a statement of its year’s preservation activities.

(f) Each state agency shall submit to the State Historic Preservation Officer for comment documentation for any project having the potential to affect historical resources listed in or eligible for registration as a state historical landmark.

(g) As used in this section and Section 5024.5, “state agency” means an immovable work constructed by man having interrelated parts in a definite pattern of organization and used to shelter or promote a form of human activity and which constitutes an historical resource.

5024.1 California Register of Historical Resources.

(b) California Register of Historical Resources is hereby established. The California Register is an authoritative guide in California to be used by state and local agencies, private groups, and citizens to identify the state's historical resources and to indicate what properties are to be protected, to the extent prudent and feasible, from substantial adverse change. The commission shall oversee the administration of the California Register.
3. The Legal Basis

(c) The California Register shall include historical resources determined by the commission, according to procedures adopted by the commission, to be significant and to meet the criteria in subdivision (c).

(d) A resource may be listed as an historical resource in the California Register if it meets any of the following National Register of Historic Places criteria:

1) Is associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage.
2) Is associated with the lives of persons important in our past.
3) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values.
4) Has yielded, or may be likely to yield, information important in prehistory or history.

(e) The California Register shall include the following:

1) California properties formally determined eligible for, or listed in, the National Register of Historic Places.
2) State Historical Landmark No. 770. For state historical landmarks preceding No. 770, the office shall review their eligibility for the California Register in accordance with procedures to be adopted by the commission.
3) Points of historical interest which have been reviewed by the office and recommended for listing by the commission for inclusion in the California Register in accordance with criteria by the commission.

(f) If nominated for listing in accordance with subdivision (f), and determined to be significant by the commission, the California Register may include the following:

1) Individual historical resources.
2) Historical resources contributing to the significance of an historic district under criteria adopted by the commission.
3) Historical resources identified as significant in historical resources surveys, if the survey meets the criteria listed in subdivision (g).
4) Historical resources and historic districts designated or listed as city or county landmarks or historic properties or districts pursuant to any city or county ordinance, if the criteria for designation or listing under the ordinance have been determined by the office to be consistent with California Register criteria adopted by the commission.
5) Local landmarks or historic properties designated under any municipal or county ordinance.

(g) A resource may be nominated for listing as an historical resource in the California Register in accordance with nomination procedures adopted by the commission, subject to all of the following:

1) If the applicant is not the local government in whose jurisdiction the resource is located, a notice of nomination in the form prescribed by the commission shall first be submitted by the applicant to the clerk of the local government. The notice shall request the local government to join in the nomination, to provide comments on the nomination, or if the local government declines to join in the nomination or fails to act upon the notice of nomination within 90 days, the nomination may be submitted to the office and shall include any comments of the local government.
(2) Prior to acting on the nomination of a survey, an individual resource, an historic district, or other resource to be added to the California Register, the commission shall notify property owners, the local government in which the resource is located, local agencies, other interested persons, and members of the general public of the nomination and provide not less than 60 calendar days for comment on the nomination. The commission shall consider those comments in determining whether to list the resource as an historical resource in the California Register.

(3) If the local government objects to the nomination, the commission shall give full and careful consideration to the objection before acting upon nomination. Where an objection has been raised, the commission shall adopt written finding to support its determination concerning the nomination. At a minimum, the findings shall identity the historical or cultural significance of the resource, and if applicable, the overriding significance of the resource that has resulted in the resource being listed in the California Register over the objections of the local government.

(4) If the owner of a private property or the majority of owners for a historic district or single property with multiple owners object to the nomination, the commission shall not list the property as an historical resource in the California Register until the objection is withdrawn. Objections shall be submitted to the commission by the owner of the private property in the form of a notarized statement certifying that the party is the sole or partial owner of the property, and that the party objects to the listing.

(5) If private property cannot be presently listed in the California Register solely because of owner objection, the commission shall nevertheless designate the property as eligible for listing.

(h) A resource identified as significant in an historical resources survey may be listed in the California Register if the survey meets all of the following criteria:

(1) The survey has been or will be included in the State Historic Resources Inventory.
(2) The survey and the survey documentation were prepared in accordance with office procedures and requirements.
(3) The resource is evaluated and determined by the office to have significance rating of Category 1 to 5 on DPR form 523.
(4) If the survey is five or more years old at the time of its nomination for inclusion in the California register, the survey is updated to identify historical resources which have become eligible or ineligible due to changed circumstances or further documentation and those which have been demolished or altered in a manner that substantially diminishes the significance of the resource.

(i) Upon listing an historical resource or determining that a property is an historical resource that is eligible for listing, in the California Register, the commission shall notify any owner of the historical resource and also the county and city in which the historical resource is located in accordance with procedures adopted by the commission.

(j) The commission shall adopt procedures for the delisting of historical resources which become ineligible for listing in the California Register.

5024.5 State-owned Historical Resources; notice and summary of proposed actions to SHPO; mediation responsibility.
3. The Legal Basis

(a) No state agency shall alter the original or significant historical features or fabric, or transfer, relocate, or demolish historical resources on the master list maintained pursuant to subdivision (d) of Section 5024 without, early in the planning processes, first giving notice and a summary of the proposed action to the officer who shall have 30 days after receipt of the notice and summary for review and comment.

(b) If the officer determines that a proposed action will have an adverse effect on a listed historical resource, the head of the state agency having jurisdiction over the historical resource and the officer shall adopt prudent and feasible measures that will eliminate or mitigate the adverse effects. The officer shall consult the State Historical Building Safety Board for advice when appropriate.

(c) Each state agency shall maintain written documentation of the officer’s concurrence with proposed actions which would have an effect on an historical resource on the master list.

(d) The officer shall report to the Office of Planning and Research for mediation instances of state agency refusal to propose, to consider, or to adopt prudent and feasible alternatives to eliminate or mitigate adverse effects on historical resources on the master list as specified in subdivision (f) of Section 5024.

(e) The officer may monitor the implementation of proposed actions of any state agency.

(f) Until such time as a structure is evaluated for possible inclusion in the inventory pursuant to subdivisions (b) and (c) of Section 5024, state agencies shall assure that any structure which might qualify for listing is not inadvertently transferred or unnecessarily altered.

(g) The officer may provide local governments with information on methods to preserve their historical resources.

5097.9 Native American Historical, Cultural and Sacred Sites; free exercise of religion; cemeteries, place of worship on ceremonial sites.

No public agency, and no private party using or occupying public property, or operating on public property, under a public license, permit, grant, lease, or contract made on or after July 1, 1977, shall in any manner whatsoever interfere with the free expression or exercise of Native American religion as provided in the United States Constitution and the California Constitution; nor shall any such agency or party cause severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property, except on a clear and convincing showing that the public interest and necessity so require. The provisions of this chapter shall be enforced by the commission, pursuant to Sections 5097.94 and 5097.97.

The provisions of this chapter shall not be construed to limit the requirements of the Environmental Quality Act of 1970, Division 13 (commencing with section 21000). The public property of all cities, counties, and city and county located within the limits of the city, county, and city and county, except for all parklands in excess of 100 acres, shall be exempt from the provisions of this chapter. Nothing in this section shall, however, nullify protections for Indian cemeteries under other statutes.
WHAT TO DO
The following actions must be taken immediately upon the discovery of human remains:

1. Stop immediately and **contact the County Coroner.**

2. The coroner has **two working days** to examine human remains after being notified by the responsible person. If the remains are Native American, the Coroner has 24 hours to notify the Native American Heritage Commission.

3. The Native American Heritage Commission will immediately notify the person it believes to be the most likely descendent of the deceased Native American.

4. The most likely descendant has **24 hours to make recommendations** to the owner or owner's representative for the treatment or disposition, with proper dignity, of the human remains and grave goods.

5. If the descendant does not make recommendations within 24 hours the owner shall reinter the remains in an area of the property secure from further disturbance, or; If the owner does not accept the descendant's recommendations, the owner or the descendant may request mediation by the Native American Heritage Commission.
WHAT IS ARCHAEOLOGY?

- Archaeology is a study of past people—not dinosaurs
- Archaeology measures who we are
- Archaeology provides insights into how people solved past problems of food, shelter, clothing, interactions, and religion
- Archaeology expands understanding of history

THE IMPORTANCE OF CONTEXT TO ARCHAEOLOGY

- Artifacts versus relationships between items
- Provenience versus context
- Uncomprehensible deposits, occupation zones versus discrete, isolated occupations

ARCHAEOLOGICAL QUALIFICATIONS

The archaeologist must meet the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44740), as well as standards and guidelines for historic preservation activities established by the SHPO. Consulting Archaeologists and Field archaeologists also should have experience working with California Native American tribes.

There are several ways to judge whether the professional archaeologist is qualified for the task at hand:

- Determine whether he or she has past experience in dealing with the appropriate resources, i.e., request company information and/or the resumes of key personnel. Some regional archaeological information centers provide lists which specify a professional archaeologist's areas of expertise
- Experience working with the local Native Americans.
- Determine in what fields the archaeologist has been certified by the Register of Professional Archaeologists - http://www.rpanet.org

PHASES OF CULTURAL RESOURCE STUDIES

In accordance with the California Environmental Quality Act of 1970 (CEQA), all of these phases should be implemented by a qualified professional archaeologist. There are three basic phases of concern for a project:
1. Phase I - Inventory of Cultural Resources

This phase generally involves three steps:

- Background research
  - A records search
  - Native American Consultation
- Field Survey
- A written report

(a) Records Search

If provided with the boundary of the project area on a USGS topographic map, for a fee, the professional archaeologist can request a records search at the appropriate Regional Archaeological Information Center.

This records search will minimally determine the following:

1. Whether a part or all of the project area has been previously surveyed for cultural resources;
2. Whether any known cultural resources have already been recorded on or adjacent to the project area;
3. Whether the probability is low, moderate, or high that cultural resources are located within the project area; and,
4. Whether a field survey is required to determine whether previously unrecorded cultural resources are present.

(b) Native American Consultation

Background research should include Native American consultation. A letter must be sent to the Native American Heritage Commission (NAHC) requesting that they check the Sacred Lands Inventory for burials, cemeteries, sacred sites, and traditional cultural properties along the route. In addition to this information (if available), the NAHC will provide names and addresses of interested Native American parties who should be informed about the project and requested to provide information about sites or locations of specific concern to them. Information secured during this consultation process can provide a more comprehensive understanding of resources to be expected in an area. This can greatly improve the results of subsequent field surveys.
Field Survey

In most instances, a field survey by a professional archaeologist will be required. The purpose of the field survey is to examine areas that will be disrupted.

Site Forms and Written Report

If cultural resources are identified, these must be properly recorded on official state forms, and a report must be written which describes how the survey was conducted with recommendations for further work, if needed.

Copies of both the site forms and the written report must be filed with the appropriate government agency. Guidelines for the format and content of all types of archaeological reports have been developed by the California Office of Historic Preservation, and reports will be reviewed by the regional information centers to determine whether they meet those requirements.

It cannot be stressed enough how important it is for the project proponent to complete the Phase I inventory stage as early as possible, and city and county planners are strongly urged to make this recommendation to their applicants. If cultural resources constraints for a project are known from the beginning, it is usually possible to redesign the project to avoid impacts to important cultural resources, resulting in great savings of both time and money.

2. Phase II - Evaluation of Cultural Resources

The purpose of this phase is to determine whether a cultural resource is important (significant). If it is not important according to the criteria outlined in Section 15064.5 of the California Environmental Quality Act, there will be no significant environmental effect and no further work is needed. If the resource is important, then impacts to the resource must be mitigated.

There are many types of prehistoric archaeological sites. Some can be evaluated during the course of the Phase I survey. Others can be evaluated during an extended Phase I survey in which the archaeologist excavates a few shovel test pits to determine whether a subsurface deposit is present.

Some sites encountered, usually those which were habitation sites, may require formal test excavations. It is important to note that test excavations have limited goals and should be limited in scope. These goals include:

- Determination of site boundaries
- Assessment of the site’s integrity, i.e., how intact the site is
- Evaluation of the site’s importance or significance through a study of its features and artifacts

Large scale excavations are not necessary during the evaluation stage.
4. Role of Archaeology

3. Phase III - Treatment of Impacted, Significant Cultural Resources

If Phases I and II (inventory and evaluation) determine that no important cultural resources are present within the project area (including access roads), then no further work is needed. A Negative Declaration can be issued for cultural resources.

If important resources are identified, there are several ways to treat and mitigate impacts to these resources. These include preservation through:

- Avoidance
- Site capping (burial)
- Creation of conservation easements
- Data recovery

**AVOIDANCE**

The preferred mitigation measure under the California Environmental Quality Act is site avoidance. If Phase I studies are conducted early on, perhaps most projects can be designed so as to avoid important cultural resources. This can be done by ensuring they fall into areas designated as open space or otherwise undeveloped areas. This is the least costly mitigation measure and is favored by archaeologists, local historical societies, and Native American groups.

**SITE CAPPING (NOT APPLICABLE TO FIBER OPTIC INSTALLATIONS)**

In those instances where avoidance is not possible, one solution is to bury the site with a layer of fill prior to development. However, before a site can be capped, several requirements must be met. A site cannot be capped until its importance has been evaluated and its boundaries have been adequately mapped.

This allows the archaeologist, local Native Americans, and permit agencies to know what has been buried and precisely where it is located. In addition, the fill must be of the appropriate materials and should be thick enough to contain all types of utility trenches and other ground disturbances.

In some instances, site capping may not be feasible due to local soil conditions or because the proposed buildings are so massive that their weight would severely damage the site through compaction. Deed restrictions should be considered to restrict owners from excavating below the fill for any future improvements.

**CONSERVATION EASEMENTS**

In some instances, it may be possible to deed the portion of the property containing the important cultural resource to a preservation organization.
DATA RECOVERY

This is by far the most costly and often the most time consuming alternative. There are two types of data recovery:

- Data recovery excavations at prehistoric or historic archaeological sites
- Data recovery through archival and photographic documentation and measurement of historic structures

WHAT ARCHAEOLOGISTS LOOK FOR: ARTIFACTS AND OTHER INDICATORS

Geological Evidence

- Landforms conducive to settlement
- Landform irregularities (e.g., mounds)
- Geological material that is out of place (e.g., obsidian in coastal California)

Ecological Evidence

- Unusual vegetation patterns (e.g., clusters of buckeyes have been noted on shell mound sites in the San Francisco Bay area)
- "Ecofacts"—items that, despite being natural objects from the environment, may be evidence of human activities (e.g., shell; mammals, reptile or fish bone; stone); important to consider ways that ecofacts might be in an area by other than human agency (e.g., shells being carried to an area by birds or animals); important to look for human modification in process of use (e.g., cut or sawn bone)
- Culturally modified soils, including midden; compacted soil at living surfaces, and burned soil (important to understand that natural organic soil may look like midden)

Artifactual Evidence

An "artifact" is defined as any item made or manufactured by humans, or modified for human use. Photographs 1 through 17 illustrate various types of Native American artifacts. Artifactual evidence may include:

- Stone or "lithic" artifacts: chipped stone, ground stone, fire-cracked rock, bedrock mortars; projectile points, scrapers, choppers, other cutting tools, grinding tools (manos, metates, pestles) etc. Typical stone types include chert, jasper, quartzite, basalt and obsidian
- Bone artifacts: projectile points, awls, hooks, etc.
- Shell artifacts: beads, other ornaments, hooks, etc.
4. Role of Archaeology

- Wooden artifacts; woven artifacts; fabric artifacts – items that are seldom preserved in an archaeological context
- Rock art: petroglyphs, pictographs, intaglios
- Pottery, ceramics, glass
- Metal artifacts (in California, mostly in historic context; in some parts of North America, copper was used in prehistoric times)
Illustrations: Reproductions of Artifacts

Photograph 1.
Bone and chipped stone tools

Photograph 2.
Shell beads

Photograph 3.
Bone whistles
4. Role of Archaeology

Photograph 4.
Miscellaneous bone and stone artifacts

Photograph 5.
Chipped stone projectile points
Chipped stone bear effigy

Photograph 6.
Chipped stone tools
4. Role of Archaeology

Photograph 7.
Large chipped stone projectile point (spear point)
Carved bone

Photograph 8.
Side-notched projectile point (arrow point)

Photograph 9.
Corner-notched projectile point (arrow point)
4. Role of Archaeology

Photograph 10. Chipped Stone

Photograph 11. Carved bone Charm stone

Photograph 12. Ground stone
4. Role of Archaeology

Photograph 13. Charmstones

Photograph 14. Bone whistles

Photograph 15. Ear Plugs
Photograph 16. Charmstones

Photograph 17. Portable mortar and pestel
4. Role of Archaeology

Importance of Research Designs as a Means of Defining Regionally Important Issues

- Not all areas with artifacts are equally important
- Summary of regional knowledge identifies research gaps
- Resources that can contribute to regional issues are important
- Not all subareas of a site contain equally important information

Areas of Potential Effects (APES) and the Limitations of Archaeology

- APE shape (point, line area) and size drives the areas of concern
- Continuously linear vs. gap linear projects
- Archaeological studies and the philosophy of resource avoidance

Features

- "Feature" defined: a non-portable arrangement or association of artifacts or discolored soils for human activities
- For instance, a pile of native stones may be a trail marker or a burial cairn
- A circle of rocks may indicate a hearth, "sleeping circle," or architectural structure
- Some features can only be distinguished during archaeological excavation, e.g., food storage pits, or postholes associated with structures
- Circular depressions may represent ceremonial structures
- Features may also consist of manufactured items—e.g., an abandoned railroad siding is a feature

Human Remains

- May be relatively easy to identify if burial is complete
- Remains are often fragmentary and more difficult to identify
- Bird and small mammal bone easier to distinguish from human
- Large mammal bone harder to distinguish from human
- If large mammal bone can be identified by element (e.g., a rib bone, or femur—upper leg bone) comparison of size and robustness may show that it is not human (horse/cow much larger, heavier than human)
- Food remain bones are often sawn
4. Role of Archaeology

- Many bones can be identified only by someone trained in comparative osteology
- Some fragmentary bones cannot be identified by non-destructive means
- Human remains may occur either in archaeological or non-archaeological contexts
- Legally, the presence of human remains requires specific responses regardless of whether the remains are in an archaeological site or not, and regardless of the degree of disturbance of the site

Contextual Evidence

- "Context" defined: where something is found and what is found around it
- Context must be considered in order to determine whether something is or is not archaeological
- For instance, dark soil without artifacts or culturally modified ecofacts may not be archaeological; need to consider geological setting to decide if it might be, for instance, naturally organic marsh soil
- Contextual clues also tell whether archaeological sites are disturbed or not; glass or metal artifacts buried under prehistoric artifacts indicate that materials are no longer in original stratigraphic (layered) context
- When human remains are found, context—types of artifacts found in association—may indicate whether the remains are prehistoric or recent
When property proponents and public agencies assess the environmental impact of their projects, they must consider "cultural resources" as an aspect of the environment in accordance with Article 5, Section 15064.5. These resources can include Native American graves and artifacts; natural resources used for food, ceremonies, or traditional crafts; and places that have special significance because of spiritual power associated with them. When projects are proposed in areas where cultural resources are likely to be affected, one way to avoid damage to cultural resources and minimize litigation associated with the project is to perform archaeological testing with a Native American monitor on site.

In sensitive areas, it may be appropriate to have a monitor on site during part or all of the construction work. A knowledgeable, well-trained monitor can spot indications that an area has been used as a village site, gathering area, burial site, etc. A monitor can prevent damage to a site by being able to communicate well with others involved in the project. This might involve requesting work to be stopped so that archaeological testing can be completed; sharing information so that others will understand the importance of the resource involved and act appropriately; or making sure that burials are treated appropriately when they are encountered.

GENERAL COMMENTS

• Appropriate education and familiarity with resources are essential if monitors are to be effective

• Native American monitors can potentially contribute various sorts of knowledge:
  – Traditional knowledge (information passed down orally from family members or other community elders) about specific places, e.g., old village locations
  – Traditional knowledge about types of artifacts and their cultural context or importance
  – A Native American cultural perspective on archaeological items found and appropriate ways of handling them

• Native American monitors should not be expected to be archaeologists—but the more a Native American monitor knows about archaeology and the viewpoint of archaeologists, the more effectively the monitor can be in protecting resources that are particularly important to the Indian community

• Native American monitors cannot be expected to be construction experts—but the more a Native American monitor knows about the project being constructed, the techniques and methods of construction, and the viewpoint of construction personnel, the more effective the monitor can be in protecting resources

• The Native American monitor is in a potentially awkward position with regard to the project being monitored—but being clear about one's role is a key to overcoming potential conflicts

• Despite differences in perspectives, it is very important for Native American and archaeological monitors to develop a mutual understanding and ability to work closely and cooperatively together
By working with and acting as a liaison between Native Americans, archaeologists, contractors and public agencies, a Native American monitor/project proponent can see that cultural resources are treated appropriately from the Native American point of view. This can help others involved in a project to coordinate mitigation measures and avoid obstacles to project completion.
These guidelines are intended to provide prospective monitors and people who hire monitors with an understanding of the scope and extent of knowledge that should be expected.

DESIRABLE KNOWLEDGE AND ABILITIES

- The on-site monitor should be familiar with and knowledgeable about local historic and prehistoric Native American village sites, culture, religion, ceremony and burial practices.
- Knowledge and understanding of Public Resources Code 5097.9 et al
- Ability to communicate meaning of Public Resources Code 5097.9 et al to project property proponents, Native Americans, planners, property proponents, and archaeologists.
- Ability to work with local law enforcement officials and the Native American Heritage Commission to ensure appropriate handling of all associated grave goods associated with a Native American grave during excavation.
- Ability to travel to several project sites, if necessary, within traditional tribal territory.
- Knowledge and understanding of Article 5, Section 15064.5 (formerly known as Appendix K) of the California Environmental Quality Act (CEQA) Guidelines, and Section 106 of the National Historic Preservation Act of 1966.
- Ability to read a topographical map and be able to locate for future inclusion into the NAHC Sacred Lands inventory sites that are discovered but not recorded and location of reburials.
- Knowledge of the techniques archaeologists use to collect on-site data, excavation, auger holes, trenches, shovel pits, controlled grid surface collections, etc.

REQUIREMENTS

- Required to communicate orally and in writing with local Native American tribes, project property proponents, archaeologists, planners and NAHC staff and other involved in the mitigation plan.
- Required to maintain a daily log of activities and prepare well written progress reports on any "findings" at a project site, (i.e.; associated grave goods, skeletal remains, bone fragments, beads, arrow points, pottery and other artifacts).
- Ability to identify archaeological deposits and potential areas of impact.

EXPERIENCE

- It is recommended that each monitor have previous experience working with Native American cultural resources under the guidance of qualified archaeologist. This should be continuous on-site guidance.
- Experience and knowledge regarding cultural, traditional, and religious resources can be gained by training from tribal elders. This experience and knowledge may be verified by the submission of copies of contracts, reports, letters from elders, etc.
• Formal education regarding cultural resources could be substituted for experience. This education could be taken in the Anthropology Department of a two or four year accredited institution. This education may be verified by the submission of copies of transcripts.

PREFERENCE

It is recommended that preference for monitor positions be given to local Native Americans. These local people usually have knowledge of the local customs and traditions. They are also aware of the local leaders and elders that may need to be contacted should an unusual situation occur. Since it is their traditional area being impacted, local Indians have vested interest in the project.
It is essential that all monitors be approved by Level 3 Communications before going onto sites and receive a brief orientation prior to visiting Level 3 Communications construction areas.

All monitors within Level 3 Communications outside plant (OSP) construction zones must be escorted by qualified project personnel and shall adhere to the following safety requirements:

1. **Personal Protective Equipment**
   - Monitors should wear sturdy leather boots that cover the ankles. No tennis shoes or sandals are permitted at any time.
   - Monitors are required to wear safety glasses, visibility vests, and hardhats at all times while in the construction areas. Fluor Global Services can provide these items upon request.

2. **Parking**

   While visiting construction zones, monitors should park clear of the work area in public parking spaces. If it is necessary to park in a designated work zone, turn on emergency flashers and use a beacon. With advance notice, a beacon will be provided by Fluor Global Services.

3. **Excavations**

   **DO NOT ENTER ANY EXCAVATION WITHOUT THE APPROVAL OF THE CONTRACTOR'S COMPETENT PERSON ASSIGNED TO THAT EXCAVATION.**

   Under no circumstances enter an excavation greater than 4 feet in depth without approval of the safety inspector or supervising foreman. The excavation must contain proper shoring or sloping before anyone may enter it.

   Always use a ladder or properly constructed ramp to enter or exit any excavation.

4. **Confined Spaces**

   **MONITORS ARE NOT ALLOWED TO ENTER CONFINED SPACES.**
5. **Public Traffic/Construction Equipment**

- Monitors are to be aware of public traffic patterns and are to remain on the curbside of the work zone when possible.

- Monitors are to stay well clear of moving equipment. If necessary, escorts will temporarily halt work operations.

- No monitors will be allowed in any railroad right-of-ways without having previously attended the applicable railroad safety training program.

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**Remember -- You are Responsible For Your Own Safety!**

**Work Safe and Stay Healthy!**

Unexpected discovery of cultural resources during construction can be minimized by following the recommendations of a professional archaeologist for exploratory trenching and/or archival research in old urban areas. When such exploratory trenching is not practical or feasible, grading or construction monitoring may be recommended as a mitigation measure.

Section 15064.5 of the California Environmental Quality Act, as amended, encourages city planning agencies to draw up provisions for the discovery of cultural resources. These provisions should include the immediate evaluation of cultural resource finds by a professional archaeologist. If the resource is deemed to be an important cultural resource, impacts should be mitigated by one of the measures described above. If impacts to the resource cannot be avoided, sufficient time and funds should be allotted to excavate a sample of the site. However, provisions should also be made for construction work to continue at other parts of the site while archaeological excavations take place.
Fiber Optic Technology

Fiber optic technology uses hair-thin strands of clear glass to transmit pulses of light that make up telecommunications signal used for such things as telephone conversations, images for video communications and television, and data communications. The laser-generated light pulses can travel great distances without signal distortion, resulting in higher quality communications. By using different wavelengths of light, several signals can be fed into the fibers at the same time and remain discrete while traveling many miles. Additionally, the fiber optic cables require little maintenance and are very reliable.

Project Components

The Level 3 Communications fiber optic cable system will consist of the basic components of cable, conduits, handholes, and cable vaults.

Cable Installation

The fiber optic cables are protected by conduit/innerduct made of PVC or other similar inert material. See Figure 1 and Figure 2 for cable type and construction.

Twelve or more innerducts, typically installed underground in a trench one foot wide, 4 to 5 feet deep, (minimum cover of 42 inches) form the backbone of the project. After innerduct burial, the fiber optic cable is pulled through and spliced at handholes. Installation of up to 28 innerduct systems provides opportunity for eventual expansion of the network with no further or substantive environmental impacts, because utilization of an empty innerduct will not require extensive new construction.

![Figure 1: Loose tube cable with corrugated steel tape and steel wire armor](image1.png)

![Figure 2: All dielectric cable with aramid yarn strength members over core](image2.png)
8. Fiber Optic Technology

Handholes and Access Chambers

After conduit is installed underground, the fiber optic cable is then pulled through the various conduits and spliced at handholes. From the surface, these look similar to manhole covers. The handhole is a 48" x 78" x 48" (depth/length/width) concrete and fiberglass composite structure that is used to house splices and as a point for future access to fiber cable for maintenance with minimal environmental disturbance.

The handhole structure is buried approximately 6 to 24 inches below the surface of the ground or the top of the cover may be set at grade. In addition to cable splice locations, handholes will be placed as needed to gain access to underground cable for future operations, maintenance, and necessary repairs. Handholes will be located approximately every 800 feet, or as site conditions and network planning dictate.
Construction Methods

A variety of different construction processes, methods, and technology are utilized to install the cable network, including direct burial cable plowing, directional and conventional boring, and open trench construction. These are typical construction methods used in many underground utility installation projects. Descriptions of excavation techniques follow.

Backhoe Trenching

Backhoe trenching is used only in areas that cannot be accessed by the plow trains due to topographic or environmental constraints. This technique involves excavation of a one-foot wide by four-foot deep trench, placement of a conduit and marker tape, backfilling and re-compacting, or concrete slurry fill, and restoring existing finish surfaces.

Directional Bore

Directional-bore construction methods are used throughout the project, depending on site specific needs and environmental conditions, and are employed to cross streams, rivers and wetlands areas to minimize potential environmental impacts.

Guided or directional bore machines are operated at ground level to bore under the resource and steer back up to the surface some distance from the stream’s opposite side. A non-toxic mixture of bentonite clay and water is injected into the bore during the drilling process. The clay/water mixture helps lubricate the drill head and stabilize the bore until the casing is installed. The directional bore process involves placement of one sleeve (usually 8 to 10 inches) under structures such as asphalt roads, exit ramps, driveways, wetland areas, lawns or other areas where the finished grade can not be disturbed. A surface-operated drilling device is angled into the ground...
from the surface and directed to its destination using a radio-controlled mole that contains a cutter head.

Personnel directing the mole on the ground control its depth and direction of excavation. The sleeve pipe is pushed into the excavation created by the mole. Should the mole run into rock or other debris, it can be backed up and turned around the obstruction.

Handholes are used at either side of the bore to connect the conduit/innerduct from the adjacent construction technology to the bored pipe. Boring is complete with the installation of the pipe at a depth no less than 42 inches below finished grade. No bore will be excavated less than 30 feet from the centerline of a railroad track, 15 feet from the edge of a paved state or county roadway, and 5 feet from the edge of a driveway.

**Construction Process**

**Right-Of-Way Preparation and Restoration**

This process involves staking out the alignment and final inspection of the corridor by project engineers, environmental monitors and construction managers. The typical final ROW trench is approximately 12 inches wide, but may vary depending on existing underground facilities that may be encountered, as well as the surface restoration method that will be required. The construction zone is normally approximately 20 feet wide.

The disturbance of a section of earth, approximately 1 foot wide by 4 to 5 feet deep, by means of either trenching or boring, will occur after all existing utilities and areas of environmental sensitivity have been identified and appropriately marked. The PVC innerducts are installed within the trench, and once complete, will be followed by compacted backfill or concrete slurry fill. Compaction is attained by vibratory compactors and warning tape will be installed 12 inches below grade and above all direct-buried innerduct during the backfilling process. (Note: compaction will not be undertaken in any area where human remains have been discovered.) Although not normally occurring, barricades and/or steel plate coverings, as appropriate, will be used if any trench must be left opened overnight. Excess spoils will be exported off site to an appropriate dumpsite.
**Burying Handhole Structures to Connect Innerduct Sections**

Subsurface handhole chambers are placed at the end of each set of innerduct reels, or approximately every 800 feet, and on both sides of every bore location. The handholes are set on a base of a minimum thickness of 12 inches consisting of clean gravel or crushed stone with a minimum diameter of \( \frac{3}{4} \) inch and a maximum of \( 1\frac{1}{2} \) inches.

**Backfilling and Compacting**

Immediately after the conduit is placed into the trench, the backfilling process begins. Backfilling is accomplished with a rubber-tire backhoe/loader, road graders, vibratory compactors and concrete trucks. Backfill material is compacted to eliminate erosion and soil settlement in conformance with all applicable local, state and federal specifications. Compaction will not be undertaken in any area where human remains have been discovered.

**Surface Restoration**

This is the final step in the construction process and involves appropriate grading of disturbed areas and re-establishing groundcover. In urban areas where paved surfaces have been disturbed, this consists of repairing pavements, reconstructing curbs and gutters and re-stripping pavement (if necessary). In unpaved areas, restoration will include appropriate grading to restore original or improved contours, installing and maintaining erosion control devices at locations susceptible to erosion, seeding and mulching. All cable installation debris, construction spoils, remaining installation materials and miscellaneous litter is removed for proper off-site disposal.
Appendix

A. Sources of Information

B. Acknowledgments

C. Glossary of Terms

D. Forms

E. Guidelines for the Respectful and Dignified Treatment of Human Remains
Appendix A - Sources of Information
A. SOURCES OF INFORMATION

Federal Agencies

Bureau of Indian Affairs
Sacramento Area Office
2800 Cottage Way
Sacramento, California 95825
(916) 979-2600
(916) 979-2569 - FAX

Bureau of Land Management
California State Office
2800 Cottage Way Suite W1834
Sacramento, CA 95825
(916) 978-4400

California Desert District Office
6221 Box Springs Blvd.
Riverside, CA 92507
(909) 697-5200

Department of the Army Corps of Engineers
Los Angeles District
Regulatory Section
300 N. Los Angeles St.
Los Angeles, CA 90013
(213) 894-3399

Sacramento District
Regulatory Section
1325 J Street
Sacramento, CA 95814-2922
(916) 557-5250

San Francisco District
333 Market Street
San Francisco, CA 94105

California Department of Parks and Recreation

Office of Historic Preservation
PO Box 942896 – Sacramento, CA 94296-0001
Tel: 916-653-6624
Fax: 916-653-9824
Website: http://www.calshpo@ohp.parks.ca.gov
E-mail: calshpo@quicknet.com
Native American Heritage Commission (Sacramento)
915 Capital Mall
RM 364
Sacramento, CA 95814
Tel (916) 653-4082
Executive Director: Larry Myers

Where to find help:

Selecting Qualified Archaeologists

http://ohp.cal-parks.ca.gov/chris/iclist.htm — Regional Archaeological Information Centers,
http://www.rpanet.org — National Register for Archaeologists

Often, the following agencies maintain lists of professional archaeologists and their firms:

http://www.ceres.ca.gov/planning/bol/1997/ — City Planning Departments
http://www.ceres.ca.gov/planning/bol/1997/county.html — County Planning Departments

Books to read:


Appendix B - Acknowledgement
B. ACKNOWLEDGMENTS

- Pictures of reproduction of artifacts—Larry Myers, Executive Director of the California Native American Heritage Commission

- Society for California Archaeology—Assistance with certain glossary terms. www.scanet.org

- Document content and presentation—TRC
  16689 Owens Drive, Suite A
  Pleasanton, CA 94588
  Tel (925) 398-3000

TRC serves California through offices in Irvine, Concord, Santa Fe Springs, San Diego, and Northridge.

- Document preparation—Fluor Global Services, One Fluor Daniel Way, Aliso Viejo, CA 92656

- Legal Basics—SHPO, PO Box 942896, Sacramento, CA 94296-0001

- Dwight Dutschke

Dwight Dutschke, Native American Heritage Coordinator, with the California Office of Historic Preservation
Appendix C - Glossary of Terms
C. GLOSSARY OF TERMS

1. Archeology Terms

Absolute dating: Dating in calendar years before present, as in Carbon-14 dating.

Anthropology: The scientific study of human cultural and physical traits, including, among others, the subdisciplines of archaeology, ethnology, linguistics, and physical anthropology.

Archaeological site: The location of past focused human activities defined spatially by a more-or-less continuous distribution of artifacts.

Archaeological survey: A comprehensive examination of background data and a systematic field inspection to locate and record the cultural resources of a project area. Also called Cultural Resources Inventory.

Archaeology: The branch of anthropology devoted to the scientific study of the past cultures through material remains. The goals of archaeology are to construct culture history, to reconstruct past ways of life, and to study cultural processes.

Artifact: Any object made or used by human hands, such as tools or other items found in archeological deposits.

Assemblage: A group of artifacts representative of a site, time period, or specific activity.

BRM, Bedrock mortar: Conical depressions on flat surfaces on bedrock outcrops where Native Americans milled foodstuffs or other materials.

B.P, Before Present: By convention, before AD 1950

Cairn: Location pile of rocks marking significant sites.

Carbon-14 dating, radiocarbon dating: A method used to date certain archaeological materials, e.g. charcoal from a fire hearth, involving measurement of the relative half-life of the carbon-14 atom.

Chaparral: A dense growth of shrubs or small trees.

Chert: A naturally occurring flintlike rock that was commonly used by prehistoric peoples to make stone tools such as projectile points.

Chronology: A sequential ordering that places cultural entities in temporal, and often spatial, distribution.

Cultural resources: Those tangible and intangible aspects of cultural systems, both past and present, that are valued by or representative of a given culture, or that contain information about a culture; includes archaeological sites, historic structures and features, ethnographic sites, cultural landscapes, and collections.
CRM, Cultural resources management: A branch of archaeology that is concerned with developing policies and actions in regard to the preservation and use of cultural resources.

Curation: The practices concerned with the storage, preservation, and retrieval for subsequent study of artifacts, records and collections. Curation standards are established by the Secretary of the Interior (36 CFR 79)

Data recovery: The systematic removal and documentation of scientific, prehistoric, historic, and/or archaeological materials. Data recovery of a significant archaeological site typically involves excavation, followed by detailed laboratory analyses of the collected materials and reporting.

Deflationary structure: A surface from which soil has been eroded or removed by action of wind or water.

Ecofact: Non-artifactual remains found in archeological sites, such as seeds, bones, charcoal, and plant pollen; usually byproducts of human use of the site.

Egalitarian: Very little status differentiation among residents.

Ethnographic sites: See Traditional Cultural Property.

Excavation: The process of digging archaeological sites, removing the soil, observing the provenience and context of the finds (both cultural and noncultural) contained within, and recording the finds in a three-dimensional way.

Feature: A part of a site which, unlike artifacts, usually cannot be taken from a site intact, e.g., housepits, firehearths, rock alignments, and burials.

Fire-cracked rocks: Burned rocks, typically fractured during intense heating in a firehearth; fairly common to prehistoric archaeological sites.

Flake: A thin, flattened piece or chip of stone intentionally removed from the core rock by knapping with either a stone or bone hammer. In prehistory, flakes were often worked further to make tools such as arrowheads or were used as simple cutting or scraping tools; however, the majority of flakes were discarded during stone knapping, making them one of the more common artifacts found in archeological sites.

Flake scatter, lithic scatter: A type of archaeological site; a distribution of flakes and debitage resulting from the manufacture of stone tools.

Ground stone: Rock that has been culturally modified by grinding, polishing, or pecking, for or during use, e.g., pestle, bedrock mortar, portable mortar, milling slab, millingstone, and adze handle.

Historic: The period of culture history documented by written accounts. The Spanish explorers and missionaries first made “Historic contact” in the late 1700’s.
**Housepit:** In archaeological sites, usually prehistoric, a shallow depression of variable shape and size, left in the ground when a semi-subterranean structure collapses and decays. Large housepits (10 – 30 meters across) may be associated with community structures, while small housepits (4 meters across) may be associated with family residences.

**In situ:** In place. Applied to archaeological remains found in their original, undisturbed location or position.

**Knapping, chipping:** Making stone tools by controlled flaking, either by percussion as in using a hammerstone, or by exerting pressure on the stone edge with a pointed antler tool.

**Language family:** Two or more languages that developed from a single ancestral language, implying a past historical connection.

**Lithic:** Of or pertaining to stone as in lithic artifacts or lithic scatter.

**Manos:** Hand-held stones used for grinding.

**Manuports:** Unmodified cobbles found in a place where they would not naturally occur, implying that a person carried it to that location; presumably these rocks were transported and cached for use as cooking stones or some other use.

**Midden:** A refuse deposit resulting from human activities, found primarily in prehistoric occupation sites, and generally consisting of darkened ash-stained soils, artifacts, fire-cracked rocks, food remains, and in some cases, human burials.

**Millingstone:** A naturally shaped or slightly modified stone slab or flat boulder upon which seeds and other plant products are milled with the aid of a handstone.

**Mortar and pestle:** A deep conical or U-shaped grinding surface (mortar) and tool for pounding (pestle).

**Obsidian:** Natural volcanic glass, often the preferred material for the making of flaked stone tools in California during prehistory. Where unavailable locally, obsidian was usually acquired through trade networks.

**Obsidian hydration dating:** A method for determining the relative age of obsidian artifacts by measuring the thickness of a specimen's hydration rim and comparing the rim thickness with the established hydration rate for the particular climatic-geographic area and obsidian source.

**Petroglyph:** A design made on a rock surface by pecking or abrading.

**Pictograph:** A painted or drawn design applied to a rock surface.

**Predictive model:** In archaeology studies, a conceptual structure that predicts the relationships between human land use and the environment, such as predicting where unrecorded archaeological village sites are likely to be found.

**Presidio:** Military fortification.
**Projective point:** Stone that has been flaked for the purpose of attaching a shaft such as an arrow, dart, harpoon or spear.

**Provenience (provenance):** In the context of a specific site, refers to the horizontal and vertical position of an object in relation to the established coordinate system, for example an artifact's precise location in situ.

**Radiocarbon dating:** See Carbon-14 dating.

**Ramada:** Shade structure.

**Reconnaissance:** See Archaeological survey.

**Relative dating:** Determining the age of an object in relation to another, as in older, the same age or younger; for example, obsidian hydration data are commonly used to relatively date two or more artifacts.

**Research design:** A carefully formulated and systematic plan for conducting archaeological research; includes a statement of perspective, synthesis of existing database, research domains and relevant research strategy.

**Rock art:** Drawings or designs made on rock surfaces by painting or drawing with pigments (pictographs) or by pecking an abrading (pictographs).

**Settlement/subsistence pattern:** Distribution of human settlements (cultural resources) on the landscape, in relationship to topographic features and economically important plant, animal and other natural resources.

**Shell mounds:** Large accumulations of shell, midden, and other cultural material, often including human remains.

**Site:** See Archaeological site.

**Stratigraphy:** The study of cultural and natural soil layers in archaeological and geological deposits, especially with the aim of determining the relative age of the layers; the principle of stratigraphy states that deeper layers will be older than shallower layers.

**Steatite:** Soapstone.

**Survey:** See Archaeological survey

**Traditional Cultural Property:** See Cultural resources management.
2. **Legal and Regulatory Terms** *(See Cultural Resources Management for more terms)*

**Advisory Council**: Advisory Council on Historic Preservation

**National Register**: National Register of Historic Places

**Section 110**: Section 110 of the National Historic Preservation Act

**404 Permit**: Section 404 of the Clean Water Act (CWA)
3. Cultural Resources Management

ACHP, Advisory Council, or Council: Advisory Council on Historic Preservation. This independent Federal agency composed of 19 members is charged with advising the President and Congress on historic preservation matters and administering the provisions of Section 106 of the National Historic Preservation Act.

AIRFA: American Indian Religious Freedom Act of 1978. States that the policy of the United States is to protect and preserve for American Indians their inherent rights of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians. These rights include, but are not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremony and traditional rites.

ARPA: Archaeological Resources Protection Act of 1979. Prohibits the removal, sale, receipt, and interstate transportation of archaeological resources obtained illegally (without permits) from public or Indian lands and authorizes Federal agency permit procedures for investigations of archaeological resources on public lands under the agency's control. Amendments to ARPA state that the Secretaries of the Interior, Agriculture, and Defense shall develop plans for surveying the lands under their control to determine the nature and extent of archaeological resources, prepare a schedule for surveying those lands that are likely to contain the most scientifically valuable archaeological resources, and develop documents for reporting suspected violations.

APE: Area of Potential Effects, as defined by the NHPA for the Section 106 review process. The area, or areas, within which an undertaking may cause changes in the character or use of historic properties, should any be present.

CEQA: California Environmental Quality Act of 1970. State legislation that requires all State and local agencies and governments to evaluate proposed activities which may significantly affect the environment, including cultural resources. Compliance may include preparation of a Negative Declaration or an Environmental Impact Report (EIR).

CFR: Code of Federal Regulations. The government-wide regulations that all Federal agencies must follow. CFRs have the force of law.

Cultural patrimony: Objects that are sacred or otherwise significant to a tribe or group, and because of their nature, were not the private property of individuals in that group. A carving representing a god or the medicine bundle of a clan would be examples. (Also see NAGPRA.)

EA: Environmental Assessment. Under NEPA, the document used to determine if an Environmental Impact Statement is required.

EIR: Environmental Impact Report. Under CEQA, a detailed statement of a project's effects on the environment including cultural resources, and considerations to mitigate (reduce) those effects.
**EIS**: Environmental Impact Statement. Under NEPA, a document required of Federal agencies for every major Federal action that affects the quality of the human environment, including both natural (air, water, wildlife, etc.) and cultural resources.

**FR**: Federal Register, where legal announcements are published.

**Native American**: Of or relating to a tribe, people, or culture that is indigenous to the United States.

**Historic property**: Any prehistoric of historic district site, building structure, or object included in, or eligible for inclusion in the National Register.

**HPP**: Historic Preservation Plan (sometimes referred to as a Cultural Resources Management Plan). A written document that describes how cultural resources will be identified, protected, and managed.

**Interested person**: Those individuals and organizations that are concerned with the effects of a particular undertaking on historic properties and are given opportunities to participate in the NHPA Section 106 process.

**Mitigate**: To lessen the adverse effects an undertaking may cause to significant environmental and cultural resources including historic properties such as:

- Limiting the magnitude of the action
- Repairing, rehabilitating, or restoring the affected property
- Recovering and recording data from cultural properties that may be destroyed or substantially altered
- Avoiding the effect altogether by not taking an action or part of an action or by relocating the action
- Reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action, and
- Compensating for the effect by providing substitute resources or environments

**MOA**: Memorandum of Agreement, resulting from Section 106 consultation. This document states the measures the Federal agency will take to avoid or reduce effects on historic properties as it carries out its undertaking. The MOA is signed by the Federal agency official, the SHPO, and the Advisory Council and Interested Parties, if participating. The MOA documents mutual agreements of facts, intentions, procedures, and parameters for future actions and matters of coordination. It shows how the needs of the federal agency, the needs and desires of the public including expressed Native American concerns, and the scientific/historical significance of the property have all been protected.
MOU: Memorandum of Understanding. Documentation of mutually agreed parameters within which support agreements that are subject to compliance with NHPA Section 106 will be developed between and among Federal and State agencies, project proponents, and interested persons, where applicable.

NAGPRA: Native American Graves Protection and Repatriation Act of 1990. Requires Federal agencies and federally sponsored museums to establish procedures for identifying Native American groups associated with cultural items on Federal lands, to inventory human remains and associated funerary objects in Federal possession, and to repatriate (return) such items upon request to affiliated groups. Also requires that any discoveries of cultural items covered by the Act shall be reported to the head of the Federal entity who shall notify the appropriate Native American tribe or organization.

NEPA: National Environmental Policy Act of 1969. States the policy of the Federal government is to preserve important historic, cultural, and natural aspects of our national heritage and requires consideration of environmental concerns during project planning and execution. Requires Federal agencies to prepare an Environmental Impact Statement (EIS) for every major Federal action that affects the quality of the human environment, including both natural and cultural resources.

NHPA: National Historic Preservation Act of 1966. Establishes historic preservation as a national policy and defines it as the protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, or culture. 1992 Amendments concern Native American participation in the federal historic preservation program.

NRHP, National Register: National Register of Historic Places. The nation’s master inventory of known historic properties (those which meet the significance standards of the National Register), administered by the National Park Service, with listings of buildings, structures, sites, objects and districts that possess historic, architectural, engineering, archaeological, or cultural significance at the national, state, or local levels.

OHP: Office of Historic Preservation (see also SHPO).

PA: Programmatic Agreement. A formal agreement between agencies to modify and/or replace the NHPA Section 106 process for numerous undertakings in a program in accordance with the implementing regulations of Section 106 presented in 36 CFR 800.13.

Section 106, NHPA: National Historic Preservation Act, Section 106. Requires Federal agencies to take into account the effects of their undertakings on historic properties and to afford the Advisory Council an opportunity to comment on such undertakings.

SHPO: State Historic Preservation Officer (see also OHP). The official designated by the Governor of each state or territory who (among other duties) consults with Federal agencies during Section 106 review, administers the national historic preservation program at the State level, reviews National Register nominations, and maintains data files on historic properties that have been identified but not nominated to the National Register. (In California these are the various information centers of the California Historical Resources Inventory.)
TCP: Traditional cultural property, also called an ethnographic site. A historic property eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that are

1. Rooted in that community’s history, and

2. Important in maintaining the continuing cultural identity of the community

Undertaking: Under NHPA, a Federal activity that is subject to Section 106 requirements. The term undertaking is intended to include any project, activity, or program and any of its elements that has the potential to have an effect on a historic property and that is under the direct or indirect jurisdiction of a Federal agency or is licensed or assisted by a Federal agency. Included are construction, rehabilitation, repair projects, demolition, planning, licenses, permits, loans, loan guarantees, grants, Federal property transfers, and many other Federal activities.
Appendix D - Forms
# DAILY LOG
SITE PROTECTION MONITORING

<table>
<thead>
<tr>
<th>Monitor:</th>
<th>Date:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crew Supervisor:</td>
<td>Arrival Time:</td>
</tr>
<tr>
<td>Crew Activities:</td>
<td>Departure Time:</td>
</tr>
<tr>
<td>Landowner/Jurisdiction:</td>
<td></td>
</tr>
<tr>
<td>Agency/Project Personnel Present:</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>List Crew Activities</th>
<th>Locations:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

| List Sites Inspected: | |
|-----------------------||
|                       | |
|                       | |
|                       | |
|                       | |

**Narrative report on day's activities, including problems and concerns:**

<table>
<thead>
<tr>
<th>Signature:</th>
<th>Title:</th>
</tr>
</thead>
</table>
# DISCOVERY / DAMAGE REPORT

<table>
<thead>
<tr>
<th>Archaeologist:</th>
<th>Date:</th>
</tr>
</thead>
</table>

Check One:

[ ] Existing Site
[ ] New Site

<table>
<thead>
<tr>
<th>Site Number:</th>
<th>Federal Number:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

How Discovered:

Date and Time of Damage:

Responsible Party: | Responsible Supervisor:

Witnesses:

Detailed Description of Damage (include site sketch map, type of damage, dimensions, deposits disturbed, photographs):

Agency Notification (who, when, attach a summary of communication):

Actions Taken:

Signature: | Date:
|-----------|------|
# MONITOR FIND FORM

<table>
<thead>
<tr>
<th>Name:</th>
<th>Segment No:</th>
<th>Date:</th>
<th>Day:</th>
</tr>
</thead>
</table>

**Location:** MP Stn #: 

**Other Location Description:**  

**Date and Time of Find:**  

**How Discovered:**  

**Detailed Description of Find** *(include sketch map, material, context integrity):*

**Nearest Recorded Site(s) / Isolate(s):**  

**Actions Taken:**  

**Further Actions Recommended:**  

**Photographs:**  

- [ ] Yes  
  - Date  
  - Roll #  
  - Exposure #  

- [ ] No  

**Signature:**  

**Date:**  

**Form Sent to:**  

via (circle one):  

- FAX  
- US Mail  
- Other
# SITE CONDITION RECORD

<table>
<thead>
<tr>
<th>Monitor:</th>
<th>Date:</th>
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<table>
<thead>
<tr>
<th>Site Number:</th>
<th>Federal Number:</th>
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<table>
<thead>
<tr>
<th>Site Type:</th>
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</table>

**Narrative Description of Site Condition (list site impacts including evidence of cutting, vehicular activity, cutting activity, modern trash, etc.):**

<table>
<thead>
<tr>
<th>Changes in Site Condition (list any changes noted since the last visit):</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

**Photographs:**

[ ] Yes Roll # ______ Exposure # ______

[ ] No

**Impacts Plotted on Survey Sketch Map:**

[ ] Yes

[ ] No

**Signature:**

Title
Appendix E - Guidelines for the Respectful and Dignified Treatment of Human Remains
E. Guidelines for the respectful and dignified treatment of human remains

A. If protection against disturbance during construction or future development cannot be reasonably assured, remains will be removed for reburial. The archaeologist will expose the burial and grave objects in the presence of a Native American representative/monitor.

B. The following restrictions are applicable to situations where Native American Indian remains are discovered or disturbed during construction:

- Whether in the laboratory or in the field, the use of tobacco, marijuana, alcohol or drugs (medications exempted)
- The use of radio’s or “boom boxes” for musical entertainment is prohibited
- The consumption of food and drink is prohibited
- Nobody is to take photographs of the skeletal remains (except photographs for the archaeological record and final report)

C. Removal and transportation of human remains and grave associations will be done by the Native American Indian Representative/Monitor or his/her appointed representative.

D. No casual visitors will be permitted to view the human remains. Only individuals escorted onto the site by the Project Manager, the Archaeological Field Director, or the Most Likely Descendant (MLD) or his/her representative are to be permitted to view the human remains. Any and all unescorted visitors to the site are to be directed to one of the above three individuals. If no escort is available, all work will be stopped and the exposed remains will be covered until the Archaeological Field Director or the Most Likely Descendant or his/her representative have been summoned to the site or the visitors leave.

E. No persons are to be allowed to practice religious rites in the presence of the human remains except those individuals invited by the MLD or of by his/her representative.
Curriculum and Schedule

Nor Rel Muk Nation: Cultural Resources Monitor Training Workshop

A Collaboration Among the Nor Rel Muk Nation, Northern California Indian Development Council, and Society for California Archaeology (SCA)
Native American Programs Committee

**Course accreditation, Shasta College Community Education Department**

Who: By Invitation Only from the Nor Rel Muk Nation
When: October 1-2, 7-8, 2004
Where: Trinity PUD Conference Room, 26 Ponderosa Way, Weaverville, CA

October 1, 2004 (Day 1) – Key Historic Preservation Laws & Processes (State & Federal)
Facilitator: Janet Eidsness, Chair, SCA Native American Programs Committee
Instructors: Carol Gaubatz, Native American Heritage Commission
Dwight Dutschke, State Office of Historic Preservation

8:30am - 9:15 Welcome and Introductions
9:15 - 10:30 Carol Gaubatz: Overview of Native American Heritage Commission
10:30 - 10:45 Break
10:45 - Noon Carol Gaubatz: State Burial Protection Law, Senate Bill 18 (Sacred Sites), California NAGPRA
Noon - 1:00 Lunch
1:00 - 2:45 Dwight Dutschke: Overview of Key State & Federal Historic Preservation Laws
2:45 - 3:00 Break
3:00 - 4:30 Dwight Dutschke: Key Laws (continued), History, Roles and Responsibilities of Native American Monitors
4:30 - 5:00pm Tribal Discussion

October 2, 2004 (Day 2) – Tribal Involvement and Consultation with Agencies
Facilitator: Janet Eidsness, Chair, SCA Native American Programs Committee
Instructor: Reba Fuller, Cultural Resource Specialist Consultant

8:30am - 8:45 Welcome and Introductions
8:45 - 10:30 Reba Fuller: Consultation Process and Tribal Involvement—Section 106, CEQA, NAGPRA
10:30 - 10:45 Break
10:45 - Noon Reba Fuller: Consultation Process (continued)
12:00 - 1:00 Lunch
1:00P - 2:45 Reba Fuller: Consultation Process (continued)
2:45 - 3:00 Break
3:00 - 5:00pm Tribal Discussion
October 7, 2004 (Day 3) – Introduction to Archaeology and Cultural Resources Management
Facilitator: Janet Eidsness, Chair, SCA Native American Programs Committee
Instructors: Eric Ritter, Archaeologist, Bureau of Land Management, Redding Resource Area
Trudy Vaughan, Archaeologist with Coyote & Fox Enterprises, Redding
8:30am - 8:45 Welcome and Introductions
8:45 - 10:30 Eric Ritter: Introduction to Archaeology as Subdiscipline of Anthropology
10:30 - 10:45 Break
10:45 - Noon Eric Ritter: Introduction to Artifact Identification
Noon - 1:00 Lunch
1:00 - 2:00 Eric Ritter: Introduction to Artifact Identification (continued)
2:00 - 2:45 Trudy Vaughan: Reading USGS Topographic Maps
2:45 - 3:00 Break
3:00 - 4:30 Trudy Vaughan: Reading USGS Topographic Maps (continued)
4:30 - 5:00pm Tribal Discussion

October 8, 2004 (Day 4) – Archaeological Field Day
Facilitator: Janet Eidsness, Chair, SCA Native American Programs Committee
Instructors: Mark Arnold, Archaeologist, USFS Shasta-Trinity National Forest, Hayfork District
Trudy Vaughan, Consulting Archaeologist, Coyote & Fox Enterprises
8:30am - 8:45 Welcome and Introductions
8:45 - 10:30 Mark Arnold & Trudy Vaughan: Prefield Research, Site Recording & Mapping
10:30 - 10:45 Break
10:45 - 4:00 Site Visits (lunch in field)
4:00 - 5:00pm Tribal Discussion, Course Evaluation, Training Certificates
MECHOOPDA INDIAN TRIBE OF CHICO RANCHERIA
IN COLLABORATION WITH
SOCIETY FOR CALIFORNIA ARCHAEOLOGY
NATIVE AMERICAN PROGRAMS COMMITTEE
AND
CALIFORNIA STATE UNIVERSITY, CHICO
PRESENTS A
WORKSHOP IN CULTURAL RESOURCES MANAGEMENT

When: Friday & Saturday, January 14-15, 2005 from 8:30 a.m. - 5:00 p.m.
Where: Friday, January 14 – 8:30 a.m. meet at Big Chico Creek Ecological Reserve, Henning House
Saturday, January 15 – (Field Day) 8:30 a.m. Meet at Tribal Office, 125 Mission Ranch Blvd., then by 9:00 a.m. move to 25 Main Street (CSU Campus, Northeast Info Center)

Instructors:
Janet P. Eidsness – Chair, Native American Programs Committee (NAPC) of the Society for California Archaeology (SCA), & Consultant in Heritage Resources Management, Willow Creek
Greg White – Director, Archaeological Research Program at CSU-Chico
Antoinette Martinez – Professor, CSU-Chico Anthropology Department & Coordinator of Northeast Information Center (NEIC) of California Historic Resources Information System (CHRIS)
Amy Huberland – Assistant Coordinator, NEIC

Guests:
Richard Jenkins – Archaeologist with California Department of Forestry and Fire Protection (CDF)
Alison Macdougall – Archaeologist with Pacific Gas & Electric Company (PG&E)
Kevin McCormick – Forest Archaeologist, Plumas National Forest
Christopher O’Brien – Archaeologist/Heritage Program Manager, Lassen National Forest
Richard Olson – Native American Coordinator, Caltrans District 3
Eric Ritter – Archaeologist, Bureau of Land Management (BLM), Redding
Jason Jennings – Intern with BLM, Redding
Leslie Steidl – Archaeologist, California Department of Parks & Recreation, Lake Oroville
Bruce Steidl – Archaeologist and member of Mooretown Rancheria
Andy Holcomb – Council Member, City of Chico
Glennnda Morse – Director, Facilities Management and Services, CSU-Chico
Gary Vercruse – Grounds Manager, Facilities Management and Services, CSU-Chico
Henry Maaf – Design Manager, Facilities Management and Services, CSU-Chico
Dave Kimbrell – Project Manager, Facilities Management and Services, CSU-Chico
Rob Thacker – Project Manager, Facilities Management and Services, CSU-Chico
Tim Davis – Ranger, Sacramento River Bidwell Park
DAY 1: Friday, January 14, 2005
BLESSING & WELCOME
INTRODUCTIONS
SOURCEBOOK & TRAINING GOALS

Module 1: Native American Ethnography and Regional Archaeology
Ethnography and Ethnohistory of the Mechoopda Tribe
Overview of Regional Prehistory

Module 2: Historic Preservation Laws & Consulting with Agencies
What are cultural resources?
Which law applies: State or Federal
  Consideration of Effects: CEQA versus NEPA/106
  Burial Protection: Federal NAGPRA versus State Codes
  Repatriation: State versus Federal NAGPRA
  Vandalism, etc. Violations: ARPA, NAGPRA versus State Codes
Scenarios: Which Law Applies

Module 3: Native American Monitor Roles & Responsibilities
Background: History of Native American Monitors in California
Guidelines for Native American Monitors
General Job Description including Recommended Field Equipment
Suggestions for Daily Note Keeping
Protocols for Discovery of Burials or Sensitive Items

DAY 2: Saturday, January 15, 2005
(Meet 8:30 a.m. at Tribal Office, then travel to CSU Campus/NEIC by 9:00 a.m.)

Module 4: Role of Information Centers in CRM
Visit to Northeast Information Center (NEIC) of CHRIS, housed at 25 Main, CSU-Chico Campus

Module 5: Archaeology and Basic Artifact Identification
Visit to Anthropology Lab/Collections Facility at CSU-Chico
The ‘Stuff’ and Language of Archaeology
Basic Flaked-stone Identification

Module 6: Site Visits
Field Trip Native American Archaeological Sites
Field Exercise Objectives:
  Finding sites
  Estimating site boundaries
  Describing site constituents
  Assessing present conditions, past and anticipated impacts

COURSE EVALUATION
ACKNOWLEDGEMENTS
CERTIFICATES
Nor Rel Muk Nation
Tribal Monitor Training

Janet P. Eidsness

The Nor Rel Muk Nation requested assistance from the SCA NAPC to plan and conduct an ambitious 4-day Native American Monitor workshop based on referrals from Dotty Theodoratus (Ethnographer) and Reba Fuller (Tuolumne Band of Me-Wuk Indians). The workshop was held on October 1-2, 7-8, 2004, in Weaverville at the PUD conference room and was funded in part by a grant to the Tribe from the Northern California Indian Development Council (NCIDC) in Eureka. Course accreditation and certificates were provided by the Shasta College Community Education Department to the eight participating Tribal members (sidebar) and their guest, Pliny “Jack” Jackson (Yurok/Hupa), who is a Case Worker at the newly opened TANF (Temporary Assistance to Needy Families) office in Weaverville, NAPC Chair Janet Eidsness coordinated the planning and compiled a customized Sourcebook with contributions from Eric Ritter, in consultation with the Tribe's lead workshop coordinator extraordinaire and Tribal Secretary, Michele Endicott, and the Tribal Chairperson, John “Sonny” Hayward.

The Nor Rel Muk Nation maintains a Tribal Office in Hayfork, where they are actively working to petition for Federal acknowledgement and to protect heritage resources important to this Wintu community of 800+ members. Their ancestral homelands spread from the Sacramento River in Shasta County westward across the upper and mid Trinity River region to South Fork Mountain, and from Scott Mountain above Trinity Lake southward to Cottonwood Creek.

Key historic preservation laws and processes were the topic of the first day session that featured informal presentations and group discussions led by Carol Gaubatz, Staff Analyst with the Native American Heritage Commission (NAHC), and Dwight Dutschke of the Office of Historic Preservation (OHP). Carol discussed the history and functions of the NAHC - maintaining the confidential Sacred Lands File, updating lists of Native American Contacts and Most Likely Decedents, commenting on CEQA documents forwarded by the State Clearinghouse, facilitating protection of Native American graves pursuant to state law, among other important roles and services. Tribal members were most appreciative to have NAHC participation, and Carol was thrilled to be able to get out from behind the phone to meet the people face-to-face. Dwight Dutschke, who is an active member of the Ione Band of Miwok and has

California Senate Bill 18 (Burton 2004)

Executive Summary

California Senate Bill 18 (Burton 2004) requires city and county planning agencies to consult with California Native American tribes during the preparation or amendment of General Plans for the purpose of preserving specified places, features, and objects located within the city or county's jurisdiction. The intent of this legislation is to accomplish the following:

(1) Recognize that California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places are essential elements in tribal cultural traditions, heritages, and identities.

(2) Establish meaningful consultations between California Native American tribal governments and California local governments at the earliest possible point in the local government land use planning process so that these places can be identified and considered.

(3) Establish government-to-government consultations regarding potential means to preserve those places, determine the level of necessary confidentiality of their specific location, and develop proper treatment and management plans.

(4) Ensure that local and tribal governments have information available early in the land use planning process to avoid potential conflicts over the preservation of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places.

(5) Enable California Native American tribes to manage and act as caretakers of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places.

(6) Encourage local governments to consider preservation of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places in their land use planning processes by placing them in open space.

(7) Encourage local governments to consider the cultural aspects of California Native American prehistoric, archaeological, cultural, spiritual, and ceremonial places early in land use planning processes.

SB 18 specifies that by March 1, 2005, the State Office of Planning and Research (OPR), in consultation with the Native American Heritage Commission (NAHC), provide guidelines containing advice to local agencies for consulting with California Native American tribes for all of the following:

(1) The preservation of, or the mitigation of impacts to, places, features, and objects described in Sections 5097.9 and 5097.995 of the Public Resources Code.

(2) Procedures for identifying through the NAHC the appropriate California Native American tribes.

(3) Procedures for continuing to protect the confidentiality of information concerning the specific identity, location, character, and use of those places, features, and objects.

(4) Procedures to facilitate voluntary landowner participation to preserve and protect the specific identity, location, character, and use of those places, features, and objects.
decades of service at OHP, spoke candidly from his experience base about how tribes can be most successful advocating for protection of their ancestral places—when consulting with agencies and developers, working with their own tribal membership and other tribes, and establishing tribal monitoring protocols and programs. Dwight observed that an estimated 80 percent of California Indians are not members of federally recognized tribes. He offered advice to the Nor Rei-Muk Nation leaders about using legal-ease ("knowledge and expertise," "prudent and feasible," "informed decisions") when notifying local agencies about the Tribe’s interests in being notified and having the opportunity to comment on discretionary projects for their area of concern. As for setting up tribal monitoring programs, Dwight stressed his beliefs that the main responsibility of a monitor is to serve as a liaison in communicating their tribe’s cultural values, and that monitor positions model the traditional cultural hierarchy with knowledgeable elders ranked highest. Notably, he observed that when Native American monitoring is made a condition of project approval under CEQA, it establishes a contractual obligation similar to the PA or MOA in the Section 106 process. Moreover, he stressed the importance of “anticipating future consequences” by incorporating discovery plans and protocols, and provisions for enforcement of mitigation monitoring, into the conditions for project approval.

Tribal consultation was the topic for the second day session led by Reba Fuller, a member of the Tuolumne Band of Me-Wuk Indians who is actively involved with Central Sierra Me-Wuk Cultural and Historic Preservation Committee and leads seminars in Native American Consultation for the National Preservation Institute. Reba stressed the importance of carefully developing and executing agreement documents between tribes and agencies, offering several samples: a MOU that establishes consultation protocols under a government-to-government relationship between a tribe and an agency; a MOA for treatment and disposition of human remains and other cultural objects encountered during project related activities; a MOA regarding the exchange of sensitive and confidential information; a tribal monitor contract that sets forth roles and responsibilities; and a daily monitor log. Reba stressed that as tribal representatives, Native American monitors need to be familiar with and help implement the conditions and protocols set forth in relevant project and agency agreement documents.

On the third day, Eric Ritter, BLM Archaeologist and Shasta College Instructor, delivered an introductory lesson on archaeology as a subdiscipline of anthropology, plus basic artifact identification. Provided were illustrations, plus hands-on examination of artifact collections typical of area prehistoric archaeological sites, and a flint-knapping demonstration. In the afternoon, an exercise in reading USGS topographic maps was led by Archaeological Consultant Trudy Vaughan of Coyote &
Building Connections:
A Cultural Resource Management Workshop for the Mechoopda Indian Tribe of Chico Rancheria

Wendy Gaston and Tim Carr

The Mechoopda Indian Tribe of the Chico Rancheria in collaboration with the Society of California Archaeology, Native American Programs Committee and California State University, Chico held a workshop in Cultural Resource Management on January 14-15, 2005. Forty then forty people attended this two day workshop including Mechoopda Tribal Members, City of Chico Council Members and representatives from the Planning Department, representatives from the California State University, Chico Facilities Management and Services, as well as Archaeological Professors, and CRM professionals from the local region. The workshop was held at the request of Rebekah Funes, the Mechoopda Tribal Environmental Protection Department Director, her assistant Marissa Piero, and the Mechoopda Tribal Cultural Coordinator, Arlene Ward. They believed the tribe would benefit from instruction on CRM laws and policy, as well as an instruction on artifact recognition.

On Saturday the workshop was held at the Big Chico Creek Ecological Reserve (part of the traditional territory of the Mechoopda). NAPC Chair Janet Eidsness led the discussion. CSU-Chico Professor Antoinette Martinez and Arlene Ward and opened with a discussion of cultural identity among the Mechoopda tribal members, some of whom recounted memories of life on the former Rancheria along Sacramento Avenue in Chico and what it was like for them growing up as a member of the Mechoopda tribe. Greg White gave a presentation summarizing records of the early contact period and archaeological findings from the Sacramento Valley. However, the main focus of the day was on the various CRM laws including: NEPA, NHPA and Section 106, ARPA, NAGPRA and CEQA. Janet Eidsess discussed how these laws are implemented with special attention to the issue of Tribal consultation and Native American Monitoring. All of the participants were provided information from Lake Oroville Parks and Recreation archaeologist Leslie Steidl and PG&E archaeologist Alison MacDougall on their Native American Steward and Monitoring programs. All participants in the workshop were provided a training manual with reference materials on CRM laws, Native American Monitoring guidelines, roles, and responsibilities, and important contact information.

The Sunday session was held at the 25 Main Street offices, home to the SCA Business Office, Archeological Research Program, and the Northeast Information Center (NEIC). Amy Huberland of the NEIC introduced the center and discussed its importance, and instructed the participants.

NAPC Chair Janet Eidsness and Mechoopda Tribal Member Delores McHenry at the Mechoopda Workshop in Chico.
on how to access and use site records. Greg White introduced
the participants to the Archaeological Research Program
(ARP) and provided a presentation on excavation practices,
artifact typology, and identification. Tim Carr and Wendy
Gaston, CSU-Chico Undergraduates and ARP technicians,
assisted the participants in addressing artifact function and
identification, as well as providing a presentation on lab
methods and curation procedures. Throughout the workshop,
all CRM professionals in attendance provided insights into an
array of aspects of CRM law and policy implementation.

- The weekend workshop was supplemented by a tour of
Bidwell Mansion State Historic Park and Museum led by
Park Ranger Tim Davis. Mechoopda tribal member Delores
McHenry was able to point out and discuss a basket in the
museum collection that was woven by her grandmother.
Greg White also led the participants to the site of the main
Mechoopda village inhabited up to 1868, located on the CSU
Chico campus. While at the site, Delores McHenry led the
participants in an emotional blessing, reinforcing the
importance of this site and of tribal identity to the
Mechoopda Tribe.

A great deal of recognition is due to Rebeka Funes, and
her assistant Marissa Piero as well as Arlene Ward, and the
Mechoopda Tribe for bringing the participants together and
supplying us with two great meals. Many thanks are also due
to Jeff Mott for allowing the workshop participants to meet at
the Big Chico Creek Ecological Reserve; Tim Davis for
leading the tour of Bidwell Mansion and Museum, the many
instructors, SCA members, and all who helped in bringing this
workshop together. The mission of the SCA Native American
Programs Committee is to support communication and
information sharing between California Natives and CRM
professionals and these workshops are essential in forging
these relationships.

Mechoopda tribal members on the grounds of CSU-Chico. From
left - Chet Conway, George Clements, Susan Bush, Delores
McHenry, Arlene Ward, Marissa Piero, and Rebekah Funes.
Governor's Historic Preservation Awards
November 17, 2004

Society for California Archaeology
Cultural Resource Management for California Indians and Cultural Resource Management Professionals

Since 1996, the Governor of the State of California has annually presented the Governor's Historic Preservation Award to individuals, organizations, groups, and federal, state and local agencies whose contributions demonstrate outstanding commitment to historic preservation.

The Society for California Archaeology has established a Native American Program Committee since 2001 to encourage the exchange of information between California Indians and professional archaeologists. Designed to encourage Indian people to be more effective in interpreting, managing, and presenting significant Indian sites in California, the program has sponsored workshops dedicated to chairside science and supported symposia involving Native American scholars.

On behalf of the people of the State of California, the Department of Parks and Recreation, and the Office of Historic Preservation, I commend you for excellence in historic preservation.


Web Sites of Interest

World Meteorological Organization
http://www.wmo.ch/index-en.html

CA Native Plant Photos
http://elib.cs.berkeley.edu/photos/flora/

Fire-Cracked Rock Features on Sandy Landforms in the Northern Rocky Mountains: Toward Establishing Reliable Frames of Reference for Assessing Site Integrity
http://anthropology.tamu.edu/faculty/thoms/publications/
Geoarch%20Article.pdf

FCR (Fire-Cracked Rock) Bibliography
http://www.mtsu.edu/~kesmith/TNARCHNET/Pubs/fcr.html

Alphabetical Listing of Conchologists—Malacologists
http://www.inhs.uiuc.edu/~ksc/Malacologists/
FamousMalacologists.html

California Wildlife Foundation
http://www.californiawildlifefoundation.org/
1. What jobs are available for archaeologists?

Professional archaeologists work for universities, colleges, museums, the federal government, state governments, in private companies, and as consultants. They teach, conduct field investigations, analyze artifacts and sites, and publish the results of their research. The minimal educational requirement to work as a field archaeologist is a B.A. or B.S. degree with a major in anthropology or archaeology and previous field experience (usually obtained by spending a summer in an archaeological field school or participating as a volunteer, see question 5). While this is sufficient to work on an archaeological field crew, it is not sufficient to move into supervisory roles. Supervisory positions require a graduate degree, either an M.A./M.S. or a Ph.D.
Academic Positions. Academic institutions in the U.S. can be broadly divided into three groups: 1) universities (with graduate programs); 2) colleges (undergraduate programs leading to B.A./B.S. degrees); and 3) community colleges (two year programs leading to Associates degrees). A Ph.D. is required for faculty positions at colleges and universities. An M.A./M.S. is required for community college positions. Faculty teaching loads vary among these three groups. University faculty teach graduate courses, upper level undergraduate courses (for anthropology or archaeology majors), and introductory level courses. College faculty teach upper level undergraduate courses and introductory level courses. Community college faculty teach introductory level courses (and sometimes a few upper level courses). Requirements to obtain research funds and publish research results are highest in universities and lower in community colleges. Laboratory facilities are greater in universities than in community colleges. Most faculty positions are nine month appointments. During the summer, academic archaeologists conduct field research funded by grants or contracts, teach summer school, teach summer field schools, or work as private consultants. Research funds come from the archaeologist's school, from federal agencies such as the National Science Foundation and the National Endowment for the Humanities, and from private foundations such as the National Geographic Society, Wenner-Gren, Earthwatch, and others. Within colleges and universities archaeologists are found in departments of anthropology, archaeology, art history, architecture, classics, history, and theology.

Museum Positions. Museums may be connected with a university or independent. Museum curators conduct research, publish the results, give public presentations, prepare displays, and conserve the museum collections. Museum positions require a graduate degree (M.A./M.S. or Ph.D.). Museum positions are usually full-year appointments.

State and Federal Government Positions. Many archaeologists work for the federal government. The U.S. Forest Service, National Park Service, Bureau of Land Management, and the U.S. Army Corps of Engineers have about 800 archaeologists among them. Many archaeologists also work for state government agencies. Every state has a State Historic Preservation Office with one or more archaeologists on staff. In addition, other archaeologists work in state parks departments, highway departments, and water resource departments. Some cities also hire archaeologists to handle local ordinances protecting archaeological sites. Federal and state laws that protect the environment include protection for important archaeological sites. As a result the government is involved in managing archaeological sites on federal and state lands (parks, forests, etc). Construction projects often require archaeological surveys to locate prehistoric or historic sites and the excavation of some sites before construction can begin. Federal and state archaeologists are involved in making these decisions and supervising the archaeologists who perform the work. This kind of archaeology is called cultural resources management (CRM). Most government positions require an M.A. degree.

Private sector archaeologists. Archaeologists also work for firms that conduct the CRM investigations required by law. They may work for laboratories or centers within colleges and universities, for engineering and environmental companies, for companies specializing in archaeological investigations, or as private consultants. Positions in CRM work require an M.A. to have a supervisory role. Private sector archaeologists conduct archaeological surveys to locate prehistoric and historic sites. They also excavate significant sites prior to their destruction by
construction activities. Private sector archaeologists work in the field, in the laboratory analyzing the results of their field investigations, in the office writing reports on those investigations and preparing proposals to conduct additional work. These organizations also hire field archaeologists as temporary staff to assist with the field investigations. Field positions usually require a B.A. degree and previous field experience in an archaeological field school.

2. What education and training are required to become a professional archaeologist?

Education and training requirements are different for different kinds of archaeology. In the U.S. anthropology departments include archaeology as one of four subdisciplines (the others are physical anthropology, cultural anthropology, and linguistic anthropology). During the late nineteenth and early twentieth centuries, anthropology programs in the U.S. were established to study American Indian societies, languages, and ruins. As a result, there are few separate archaeology departments. Interdisciplinary programs that combine archaeology with various other fields of study are more common. Students who wish to study ancient or classical civilizations (including the Near East, Egypt, early civilizations of the Mediterranean, classical Greece and Rome, and the early civilizations of India, China, and southeast Asia) are more likely to pursue their studies in interdisciplinary programs that include courses in art, architecture, classics, history, ancient and modern languages, and theology. Students who wish to study the historical periods (roughly from the fall of Rome to the present) combine history (including archival and oral history research) with courses in historical and vernacular architecture, material culture and folklore, and archaeology.

At the undergraduate level, there is little specialization. A major in anthropology requires courses in all of the subdisciplines. For students interested in ancient and classical civilizations, the particular undergraduate major is not important, but it is advantageous to begin learning several ancient and modern languages (e.g. Greek, Latin, German, French). Historical archaeologists usually major in anthropology or history. An undergraduate degree (B.A./B.S.) is sufficient to work as a field archaeologist in the U.S. and to perform basic laboratory studies. Previous experience through participation in an archaeological field school or as a volunteer is often required. Summer archaeological field schools provide the best way to learn how to properly excavate and record archaeological sites and to find out if archaeology is really for you. Job opportunities outside the U.S. are very limited, but volunteers with field experience should be welcome almost anywhere.

There are two levels of graduate training in archaeology. The first is an M.A. or M.S. degree which takes about 1-2 years of course work beyond the B.A./B.S. degree and a written thesis which presents the results of original research by the student. Some programs offer a non-thesis M.A. degree. Unless you are planning to work immediately on a Ph.D. degree, the preparation of a thesis is an important part of the educational process. An M.A./M.S. would be enough to direct field crews and is sufficient for many government positions in archaeology. It is also sufficient to work in the private sector, to teach in a community college, and to work for some museums. An M.A./M.S. with a thesis and a year of field and laboratory experience is the minimum for certification by the Society of Professional Archeologists. Most foreign governments will issue
excavation permits only to archaeologists with a Ph.D. degree. This means that opportunities to
direct field projects outside the U.S. are limited to those with a doctoral degree.

The second graduate degree is the Ph.D., which is required to teach in a college or university or
hold a museum curatorship. The Ph.D. degree requires 2-3 years of courses beyond the M.A. and
the successful preparation and oral defense of a dissertation containing original research in your
chosen specialization within the field of archaeology. Some graduate programs offer streamlined
tracks for students with a B.A. degree so that they work directly toward a Ph.D. while others
require an M.A. degree first.

3. What college or university should I go to?

lists most of the graduate and undergraduate anthropology programs in the U.S. and Canada.
Included in the listings are the names and research interests of all faculty in the department. The
guide is published annually and can be purchased from the American Anthropological
Association, AAA Book Orders, 4350 North Fairfax Drive, Suite 640, Arlington, VA 22203-
1620 for $50 (http://www.ameranthassn.org/puborder.htm). You should be able to find a copy at
any college or university library. The AAA guide coverage is less complete for interdisciplinary
programs combining art, architecture, classics, language, and history to study ancient and
classical civilizations or historical archaeology. Four other guides will be useful in locating these
programs. The "APA Guide to Graduate Programs in the Classics in the United States and
Canada" is available from the American Philological Association, 19 University Place, Rm. 328,
New York University, New York, NY 10003-4556 for $12
Programs in Art and Art History" is available for $10.50 from the College Art Association, 275
Seventh Ave., New York, NY 10001 (http://www.collegeart.org/). The Classical and
Mediterranean Archaeology web page has extensive departmental listings at
http://classics.lsa.umich.edu/welcome.html#departments. Finally, the "Guide to Graduate
Programs in Historical and Underwater Archaeology" is available from the Society for Historical
Archaeology, P. O. Box 30446, Tucson, AZ 85751-0446, and online at

4. What are some general introductory books on archaeology?

Popular Books on Archaeology:

Bass, George, editor. 1988. Ships and Shipwrecks of the Americas: A History Based on
Underwater Archaeology. Thames & Hudson. ISBN 050027892X. Nautical archaeology in the
Americas.

ISBN 0801482801. >From prehistory, through the Minoan civilization and the classical
Greek city states to the Roman period in Greece.


**Textbooks on Archaeological Methods:**


Webster, David L., Susan T. Evans, William T. Sanders. 1993. *Out of the Past. An Introduction to Archaeology* Mayfield Publishing Co. ISBN 155934153X. A thorough introductory text covering the basic principles of archaeological research illustrated with examples from around the world.

**Textbooks on Prehistory:**


Video and Film:


The *Ancient World on Television* lists weekly schedules of archaeological programs on television (http://web.idirect.com/~atrium/awotv.html).

*Archaeology on Film: An Electronic Database of Archaeology Film Reviews* provides reviews of archaeological films and allows you to add your own reviews (http://www.sscf.ucsb.edu/anth/videos/video.html).

Finally, if you are just interested in a good read, Anita Cohen-Williams has compiled an extensive listing of works of fiction that include archaeologists or archaeological sites *Archaeology in Fiction Bibliography* (http://www.tamu.edu/anthropology/fiction.html).

5. I want to go on a dig. How do I volunteer?

Check with your state archaeological society. They may have an annual field school. Subscribe to the *PIT Traveler* (Passport in Time Clearinghouse, P. O. Box 31315, Tucson, AZ 85751-1315, (520) 722-2716, (800) 281-9176), a program in which volunteers work with archaeologists in the National Forest Service on a variety of projects. The Archaeological Institute of America publishes an annual *Archaeological Fieldwork Opportunities Bulletin*, Kendall/Hunt Publishing Company, Order Department, 4050 Westmark Drive, Dubuque, IA 52002 (800) 228-0810. $11.00 + $4.00 shipping and handling for non-AIA members.

On the internet, a number of projects seeking students and volunteers are listed on the *Archaeological Fieldwork Server* at (http://www.cincpac.com/afs/testpit.html).

Several organizations place volunteers and students into archaeological field projects directed by professional archaeologists:

- **Anasazi Heritage Center**
  - Bureau of Land Management
  - 27501 Highway 184
  - Dolores, CO 81323
  - (970) 882-4811
  - (http://www.co.blm.gov/ahl/hmepge.htm)

- **Center for American Archaeology**
  - Department B, Kampsville Archaeological Center
  - P. O. Box 366
  - Kampsville, IL 62053
  - (618) 653-4316
  - (http://www.caa-archeology.org/)
6. Where can I get more information on archaeology?

Pamphlets and Brochures:

The federal government publishes a brochure, "Participate in Archeology," that lists books and videos on archaeology. Write to the Publication Coordinator, Archaeological Division, National Park Service, P. O. Box 37127, Washington, D. C. 20013-7127. The Society for American Archaeology has a brochure, "Archaeology & You" which is available for $4.00 shipping and handling from SAA, 900 Second Street N.E., #12, Washington, D. C. 20002-3557.

Careers in Archaeology from the Society for American Archaeology describes the training required to become a professional archaeologist. Careers in Historical Archaeology from the SHA covers historical and underwater archaeology and provides information primarily on training and job opportunities in the United States. A four page pamphlet, "Brief 343: Archaeologists," is available from Chronicle Guidance Publications, Aurora Street, P. O. Box 1190, Moravia, NY 13118-1190 for $3.00. The Princeton Review Guide to Careers has some information on archaeology as a career on the web search on "Archaeologist" or "Curator" at http://www.review.com/career/).
Educational Resources:

The National Trust for Historic Preservation and the National Park Service have produced a series of twenty-two lesson plans ($8.00 each) called, Teaching with Historic Places, (http://www.cr.nps.gov/nr/twhp/home.html). Contact Jackdaw Publications for ordering information and shipping charges at PO Box 503 Arnowalk, NY 10501, (800) 789-0022, fax: (800) 962-9101 or from the NPS order form on the web (http://www.cr.nps.gov/nr/twhp/ordrfrm.html).

The National Museum of Natural History produces a free newsletter for teachers called Anthro Notes. For information contact P. Ann Kaupp, NHB 363, Smithsonian Institution, Washington, DC 20560. Archaeology in the Classroom, edited by Tracy Cullen and Wendy O'Brien is available from the American Institute of Archaeology ($10.50 + $4.00 shipping and handling for nonmembers, Kendall/Hunt Publishing Company, Order Department, 4050 Westmark Drive, Dubuque, IA 52002).

Everything We Know About Archeology for You to Use in Your Classroom identifies for teachers some of the educational material that is available concerning archaeology and archaeological methods for use in the classroom. Includes a number of articles and essays on archaeology in school programs, in addition to lesson plans for teaching cultural history and site preservation. Archeology and Education: The Classroom and Beyond responds to the need for making information about archaeology more accessible to the public. Both are available from the National Park Service. Write to Publications, Archeology and Ethnography Program, P.O. Box 37127, Washington, DC 20013-7127, (202) 343-4101, Email: DCA@nps.gov.

Archaeological Resources for Education describes a variety of educational resources available on the web for teaching about archaeology (http://www.interlog.com/~jabram/elise/archres.htm). Similarly, the National Park Service site Tools for Teaching (http://www.cr.nps.gov/toolsfor.htm) also provides access to educational resources on the web. The national Trust for Historic Preservation has a new web page for kids called "Trusty's Kids Corner" (http://www.trustkids.org/).

For web resources to help you learn about archaeology, visit John Hoopes "Introduction to Archaeology" Web site (http://www.cc.ukans.edu/~hoopes/anth110.html) and Kevin Greene's Electronic Companion (http://www.ncl.ac.uk/~nktg/wintro/) to his introductory text.

For web resources to help you learn about North American Archaeology, visit the Archaeology of North America, a web page organized around an introductory course in North American prehistory (http://http.tamu.edu/~carlson/archaeo.html) or The Archaeology of North America by Kevin Callahan at the University of Minnesota (http://www.geocities.com/Athens/Oracle/2596/index.html).

To stay up to date on the latest archaeological discoveries, visit Anthropology in the News a site that links you to current news stories concerning anthropology and archaeology (http://www.tamu.edu/anthropology/news.html).
Web Resources:

Several comprehensive guides to internet resources of interest to archaeologists are now available:

- **Ancient World Web** by Julia Hayden lists resources of interest to classical archaeologists and prehistorians (http://www.julen.net/aw/).
- **Anthropology Resources on the Internet** by Allen Lutins (http://www.nitehawk.com/alleycat/anth-faq.html).
- **Archaeology on the Net** includes links to archaeology web sites and information on new books of interest to archaeologists (http://www.serve.com/archaeology/+).
- **ArchNet** - The most extensive listing of web resources related to archaeology (http://archnet.ucconn.edu/+).
- **The Atrium** by David Meadows hosts the valuable "Ancient World on Television," "Commentarum" (links to news stories about archaeology), and the "Explorator" (an email list to keep you up-to-date on the latest finds) (http://web.idirect.com/~atrium/+).
- **Internet Resources for Heritage Conservation, Historic Preservation and Archaeology** by Peter H. Stott (http://www.cr.nps.gov/ncptt/irg/+).
- **Jennifer's Archaeology Website** by Jennifer Hutchey (http://arch.hutchey.com/+).
- **Yahoo! Anthropology and Archaeology** (http://www.yahoo.com/Social_Science/Anthropology_and_Archaeology/+).

The following world wide web servers provide additional information about archaeology or can link you to other archaeological resources on the web:

- **Ancient Civilizations of the Andes** (http://www.rain.org/~pjenkin/civiliz/civiliza.html).
- **Classics and Mediterranean Archaeology** (http://rome.classics.lsa.umich.edu/welcome.html).
- **Egyptology Resources** (http://www.newton.cam.ac.uk/egypt).
- **Exploring Ancient World Cultures** (http://eawc.evansville.edu/+).
- **Fantastic Archaeology** A thoughtful examination of outlandish claims (http://www.usd.edu/anth/cultarch/cultindex.html).
- **LINKS to the Past** (National Park Service) (http://www.nps.gov/crwebi/+).
- **Maya Civilization--Past and Present** (http://indy4.fdl.cc.mn.us/~isk/maya/maya.html).
- **Mining Company: Archaeology** K. Kris Hirst is your guide to archaeological resources on the net (http://archeology.miningco.com/+).
- **Mystery of the Maya** (http://www.cmcc.muse.digital.ca/membres/civiliz/maya/mminteng.html).
- **Seeking Sites Afar: Point of Reference** by Wayne Neigbors has lots of current information on archaeological research (http://anthro.org/main.htm).
- **Southwestern Archaeology** (http://www.swanet.org/+).
- U. K. Archaeology on the Internet (http://www.nottingham.ac.uk/~aczkdc/ukarch/ukindex.html).
- World-Wide Web Virtual Library: Museums. Mirror at Illinois State Museum; (http://www.museum.state.il.us/vlmp/).

Magazines:

**American Archaeology.** A new quarterly journal published for members of the [Archaeological Conservancy](http://www.gorp.com/archcons/), 5301 Central Ave. NE, Suite 1218, Albuquerque, NM 87108-1517.

**Archaeology.** Published bimonthly by the Archaeological Institute of America. Subscription Service, P. O. Box 420423, Palm Coast, FL 32142-0423, (800) 829-5122. $19.97/year for six issues (U. S. domestic rate; http://www.archaeology.org/).

**Biblical Archaeologist.** American School for Oriental Research, Membership/Subscriber Services, P. O. Box 15399, Atlanta, GA 30333-0399. $35/yr for four issues (U.S. domestic rate; http://www.asor.org/BA/BAHP.html).


**Common Ground.** Published by the National Park Service Departmental Consulting Archeologist and Archeological Assistance Program. Editor, NPS Archaeological Assistance Division, P. O. Box 37127, Washington, D. C. (http://www.nps.gov/aad/pubs.htm).

**Current Archaeology.** 9 Nassington Road, London NW3 2TX, UK, (44) 171 435-7517. $30/year for six issues (U.S. rate; http://www.archaeology.co.uk/).


**Historic Preservation.** Published by the National Trust for Historic Preservation. Membership Department, National Trust for Historic Preservation, 1785 Massachusetts Ave., NW, Washington, D.C. 20036, (202) 673-4166. $20/year for six issues including a membership in the National Trust (U.S. domestic rate; http://www.nthp.org/).

**KMT: A Modern Journal of Ancient Egypt.** KMT Communications, 1531 Golden Gate Avenue, San Francisco, CA 94115. $32/year for four issues (U.S. domestic rate; http://www.egyptology.com/kmt/).


Societies:


Archaeological Conservancy. 5301 Central Ave. NE, Suite 1218, Albuquerque, NM 87108-1517 (http://www.gorp.com/archcons/).

Archaeological Institute of America. 656 Beacon Street, Boston, MA 02215-2010 (http://www.archaeological.org/).

National Trust for Historic Preservation. 1785 Massachusetts Ave, NW, Washington D.C. 20036; (http://www.nthp.org/).


Society for Archaeological Sciences. Office of the General Secretary, SAS, Department of Anthropology, University of California, Riverside, CA 92521 (http://www.wisc.edu/larch/sas/sas.htm).

Society for Historical Archaeology. P. O. Box 30446, Tucson, AZ 85751-0446; (http://www.sha.org/).

Society of Professional Archeologists. Has become the Register of Professional Archaeologists. Listing on the Register is offered through the SAA and SHA.

Numerous other archaeological societies and newsletters can be found in the "Directory of Archaeological Societies and Newsletters" by Smoke Pfeiffer (http://www.serv.net/~mallard/hr/archsoc.html).

Acknowledgments

Additional information and valuable suggestions for improving the guide have been provided by the following individuals: George Bass, Brighid Brady-de Lambert, Karen Eva Carr, Shawn Bonath Carlson, Jim E. Chase, Anita Cohen-Williams, Jack L. Davis, Richard Ellis, Rich Fishel, James Gallagher, Bill Green, Karl Hagglund, Charles E. Jones, John O. Kopf, Smoke Pfeiffer, Andrew Selkirk, and K. D. Vitelli. The HTML version is produced and maintained by Erich Schroeder.
The Program

The Archaeological Technology Program is designed to provide students with the basic skills and practical knowledge to work as archaeological technicians in archaeological site survey, excavation, laboratory procedures, and archival research. Students with Associate in Science degrees will also have a strong foundation to transfer to four-year programs in Cultural Resources Management, Archaeology, or Anthropology.

Certificate of Proficiency

The person with a Certificate of Proficiency also will have a general understanding of the concepts of cultural anthropology and archaeology, and an introductory knowledge of the native cultures of California and/or North America, including recent history and current issues. Students will be introduced to relevant Federal and State laws and regulations. They will be able to keep systematic, descriptive field notes of their work and write basic research reports.

Graduates with the Certificate of Proficiency will be able to carry out a number of basic archaeological tasks under the general supervision of a professional archaeologist. Tasks fall under two general categories - each having its own Skills Certificate.

1. **Field Skills Certificate** requires an Introductory Archaeology class (3 or 4 units) plus Field Survey (3 units) and Field Excavation (3 units) for a total of 9-10 units;

2. **Lab and Archival Certificate** requires Laboratory, Regulations, and Archival Research and Management.

This Skills Certificate will require Anthro 3/Arche 1, Arche 3/Archives, Arche 5/Laboratory, and Arche 113A & B/Federal and State Regulations, for a total of 12-13 units.

The Cabrillo program provides both vocational and academic education leading to employment and/or continuing education. Students who have completed the G.E. requirement courses, can finish the vocational or "hands-on" coursework for the Certificate of Proficiency within one academic year.
Cabrillo College Archaeological Technology Program Certificate

Required Courses (30-31 units)

<table>
<thead>
<tr>
<th>Course</th>
<th>Time</th>
<th>Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>Archaeological Survey</td>
<td>Arche 2 - June</td>
<td>3</td>
</tr>
<tr>
<td>Data Management</td>
<td>Arche 3 - Fall*</td>
<td>3</td>
</tr>
<tr>
<td>Field Excavation</td>
<td>Arche 4 - July</td>
<td>3</td>
</tr>
<tr>
<td>Laboratory and Analysis</td>
<td>Arche 5 - August</td>
<td>3</td>
</tr>
<tr>
<td>Laws and Regulations</td>
<td>Arche 113 A, B, C*</td>
<td>3</td>
</tr>
</tbody>
</table>

After completing the Introduction to Archaeology course at Cabrillo or your local community college, you may start the professional training program at Cabrillo and complete the Arch. Tech. Certificates. Arch Tech courses are usually offered during the summer and on alternate weekends (Friday night, Saturday, Sunday) during the semester.

Students may complete their Arch. Tech Certificates, then either immediately join the ranks of the employed or continue in school to finish an AS/AA degree and/or necessary admission requirements before transferring to a four-year university such as CSU Hayward, CSU Monterey Bay, or UC Santa Cruz in order to work towards their graduate or post-graduate degrees.

Download our program brochure to view a detailed flow chart, and see an academic counselor at Cabrillo College for more information on transferal requirements.
**Career Ladder**

Students successfully completing the A.S. degree program or certificate will be qualified for entry level positions for private archaeological firms and for government agencies. Many archaeologists work for government agencies or private corporations in a profession required by federal, state and local laws and regulations - Cultural Resources Management. California currently has over 100 employers who hire entry-level archaeological technicians. Many former Cabrillo College archaeology students work for local cultural resource management firms and various agencies.

<table>
<thead>
<tr>
<th>SCHOOL</th>
<th>WORK</th>
</tr>
</thead>
<tbody>
<tr>
<td>PhD in Anthropology or Archaeology</td>
<td>Principal Investigator</td>
</tr>
<tr>
<td>Skills in theory, regional research designs, special interests</td>
<td>Project Director</td>
</tr>
<tr>
<td></td>
<td>G.S. levels 9, 10, 11, 12, 13 and 14</td>
</tr>
<tr>
<td>M.A. in Anthropology or Cultural Resource Management</td>
<td>Principal Investigator for Cultural Resource Management Firms</td>
</tr>
<tr>
<td>Skills in research management, project management, legislation, fiscal administration</td>
<td>Project Director for agencies</td>
</tr>
<tr>
<td></td>
<td>Instructor CC</td>
</tr>
<tr>
<td></td>
<td>G.S. levels 7, 8, 9 and 10</td>
</tr>
<tr>
<td>B.A. in Anthropology (120 Units)</td>
<td>Archaeological Technician II</td>
</tr>
<tr>
<td>Skills in specialized analysis, theoretical foundations, additional writing/computer</td>
<td>Activity leader, project responsible person in agency, able to supervise entry level workers</td>
</tr>
<tr>
<td></td>
<td>G.S. levels 5, 6 and 7</td>
</tr>
<tr>
<td>A.A. in Anthropology A.S. (+ 12 Units)</td>
<td>Archaeology Technician / Crew Leader - (with experience)</td>
</tr>
<tr>
<td>A.S. in Archaeology (61 Units)</td>
<td>G.S. levels 4 and 5</td>
</tr>
<tr>
<td>Certificate plus advanced training in writing, computer</td>
<td></td>
</tr>
<tr>
<td>Certificate Program (31 Units)</td>
<td>Archaeology Technician / Entry Level</td>
</tr>
<tr>
<td>Skills in survey, excavation, laboratory, data management, writing/computer</td>
<td>Working for CRM/Archaeology Consultants and agencies</td>
</tr>
<tr>
<td></td>
<td>G.S. levels 3 and 4</td>
</tr>
</tbody>
</table>

Cabrillo College's Archaeology Technology Program adds two missing rungs to the Archaeology career ladder. The initial rung of certification builds competency in hands-on skills, as well as develops strong writing capability. An A.S. in Archaeology continues the basic skills with additional writing and computing skills to allow successful ladder progress. The combination of academics and work place allows for continual movement between the two areas as additional knowledge and skills are required.
Summer Field School 2006: Taking Cultural Resources Management and Archaeological Field Training to a Higher Level.

Participate in the excitement and focused work of field archaeology on California's Coast while you prepare for professional level employment in Archaeology / Cultural Resource Management. Directed by Rob Edwards, M.A., U.C. Davis, R.P.A. and co-taught by Charr Simpson-Smith, BA, UCSC and Certificate of Proficiency Cabrillo College ATP.

This three course, nine-unit summer field school will provide an unusually excellent opportunity to learn professional archaeological field techniques including:

- **Survey/Arche 2**
  - Field Survey
  - Site Identification
  - Field Note Taking
  - Site Mapping
  - Public Education

- **Excavation/Arche 4**
  - Field Excavation Sampling methods
  - Theodolite use
  - Vertical profile drawing
  - Field Processing

- **Laboratory/Arche 5**
  - Equipment use
  - Curatorial methods
  - Artifact production
  - Data Control
  - Database cataloging

All three courses in this field school transfer to both U.C. and C.S.U. systems and exceed the Caltrans Agency guidelines for training for field archaeologists. Students from all colleges and universities or work situations are welcome. No previous field experience is necessary, but an introductory course in archaeology is required. Students with previous field experiences will be able to expand their skills and knowledge. Grades will be based on assigned exercises, field notes, and since these are professional certificate courses, attitude, and work ethic. Each course is separate. Arche 2 is a pre-requisite for Arche 4.

**Arche 2:** June 12th - 30th, Field Survey - Class hours will be 8 am to 5 pm. Monday-Friday plus one evening, June 16th, on campus.

**Arche 4:** July 10th - 28th, Excavation - Class hours will be 8 am to 5 pm on site. Where we are working this year is still under negotiation. Transportation to and from site to be provided.
NOTE: Check back later for information regarding fees and other details pertaining to Arche2 and Arche4 classes. This information must be reassessed each year, and that process is still underway for 2006.

Arche 5: August 7th - 25th, Laboratory - Class hours will be 8 am to 5 pm on College campus. Fees for Arche 5 cannot be determined at this time. Registration will occur in June.

For more information, contact Rob Edwards, (831) 479-6294 or FAX: (831) 477-5237, or complete our Application form and mail it to: Archaeological Technology Field School, Cabrillo College, 6500 Soquel Drive, Aptos, CA 95003.

Please report typos, broken links, and the like to our Webmaster.
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Department of Anthropology

M.A. in Cultural Resources Management (CRM)

Downloaded 10/4/05 from http://www.sonoma.edu/anthropology/ma_program.htm

The Master of Arts in Cultural Resources Management (CRM) involves the identification, evaluation and preservation of cultural resources, as mandated by cultural resources legislation and guided by scientific standards within the planning process. The primary objective of the Master's Program in Cultural Resources Management is to produce professionals who are competent in the methods and techniques appropriate for filling cultural resources management and related positions, and who have the theoretical background necessary for research design and data collection and analysis.

Persons with an MA in CRM will be qualified to hold positions within the United States and its territories. Some individuals will also be qualified to serve outside of the United States in an advisory capacity in establishing and managing cultural resources management programs within environmental protection and preservation contexts of other nations.

The CRM program offers its graduates with training and experience in:

- developing projects and programs in cultural resources management
- conducting analyses of archaeological, linguistic and sociocultural data for purposes of assisting public and private sectors in the implementation of environmental protection and historic preservation legislation
- the professional traditions of inquiry within anthropology and history to enable the student to assess the research significance of archaeological and ethnohistorical resources
- anthropological techniques of field and laboratory analysis, and archival and museum preparation
- existing cultural resources management data-keeping facilities

Each student in the program, with the assistance and supervision of a primary faculty advisor, develops a plan of study and thesis project that reflects her or his special interest in cultural resources management. In addition, students are encouraged to present the results of their work and research in professional meetings, research publications and public documents.

Facilities and Faculty

The department's Anthropological Studies Center houses archaeology and ethnographic laboratories and a cultural resources management facility. The Studies Center maintains collections of artifacts, archaeological site records and maps, photographs, manuscripts, tapes and a specialized research library. The Center also provides computer services and facilities for specialized processing techniques, such as obsidian hydration. The Northwest Information Center manages historical records, resources, reports and maps; supplies
historical resources information to the private and public sectors; and compiles and provides a referral list of qualified historical resources consultants. In addition to archaeologists and other anthropologists, participating faculty in the CRM program include historians, biologists, geographers, soil scientists and geologists.

Requirements for the M.A. in Cultural Resources Management

The design of the course of study as a 2 1/2-year program presumes that students are full time and not working. Experience with the program so far indicates that working students cannot successfully carry full graduate loads, and, consequently, it takes three years or more for working students to complete our program of study.

- ANTH 500 Proseminar: 4 units
- HIST* 501 Seminar in Culture, Society and Policy Analysis: 4 units
- ANTH 502 Archaeology: History and Theory: 3 units
- ANTH 503 Seminar in Cultural Resources Management: 3 units
- ANTH** 596/597 Internships: 3 units
- ANTH 599A/B Thesis: 4 units
- Supporting Courses: 9 units

Total units in the CRM degree: 30

* Prerequisite: HIST 472 (History of California to 1913).
** Internships are decided upon by discussion between the student and his or her advisor. Students will normally take both on-campus and off-campus internships. On-campus internships are available at the Cultural Resources Facility, Interpretive and Outreach Services Office, the Northwest Information Center, Archaeological Collections Facility and Ethnography Lab. Off-campus agencies include the Office of Historical Preservation, the National Park Service and the Sonoma County Museum.

Admission to the CRM Program

Applications must be submitted separately in the Fall to 1) the Department of Anthropology/Linguistics AND 2) to the University Admissions and Records Office, for possible acceptance into the program the following academic year. The application deadline date to the Department for possible entry Fall 2006 is November 30, 2005. Consult with the program's graduate coordinator for departmental requirements and submissions, as updated in the fact sheet Admission to the Cultural Resources Management Program in Conditionally Classified Status.

Submit Department applications to:
Margaret Purser
Graduate Coordinator
Cultural Resources Management MA Program
Department of Anthropology/Linguistics
Sonoma State University
Rohnert Park, CA 94928
Telephone: 707-664-3164
The Anthropological Studies Center has been helping private companies and government agency clients with archaeological sites, Native American concerns, and historic buildings since 1974. Our staff's intimate working knowledge of state and federal regulations coupled with solid scholarly research earned ASC the American Society of Civil Engineers 1999 Award of Merit as well as the Governor's Award for Historic Preservation; in 2003 ASC's director received the Society for California Archaeology's Thomas F. King Award in Cultural Resources Management.

ASC is led by Dr. Adrian Praetzellis, a practicing archaeologist with over 25 years experience. The organization's large staff is managed by Mary Praetzellis, M.A., who is also a Registered Historian. Jan Coulter, C.P.A., manages ASC's business office.

ASC has a core staff of 30 full-time and 25 part-time employees, including 14 Registered Professional Archaeologists, among whom are historical and prehistoric archaeologists, geoarchaeologists, historians, an oral historian, a staff editor, an archaeological laboratory manager, field and lab technicians, as well as report production, computer graphics, and GIS specialists.

ASC specializes in assisting clients in complying with the requirements of the California Environmental Quality Act and National Historic Preservation Act, having completed hundreds of projects for private firms, cities, and state and federal agencies.

**ASC offers the following research services:**

- Archaeology: ASC staff have a variety of experience in many areas...(more)
- Geoarchaeology: Researchers at ASC have conducted numerous studies in connection with a variety of cultural resources management projects...(more)
- Architectural History: ASC staff have recorded and researched hundreds of historic buildings...(more)
- Flotation Services: ASC is equipped and experienced to offer flotation services using a Model A Flot-Tech flotation machine, which can quickly and easily processes a large number of soil or sediments samples...(more)
- NAGPRA: ASC continues its compliance with the federally mandated Native American Graves Protection and Repatriation Act (NAGPRA)...(more)
- Collections Facilities: ASC's Collections Facility is one of the largest such facilities in northern California...(more)
- Faunal Lab: ASC has had extensive experience in the excavation of prehistoric and historic-period human remains...(more)
- Interpretive & Outreach Services (School Outreach): ASC brings archaeology, history, and the ethnography of the people of California to the general public through presentations to school groups, tours, museum displays, videos, and pamphlets...(more)
NPI offers a series of professional training seminars for the management, development, and preservation of historic, cultural, and environmental resources related to historic preservation and cultural resource management.

Identification and Evaluation of Cultural Resources

- GIS: Practical Applications for Cultural Resource Projects (2 days)
- Historic Landscapes: Planning, Management, and Cultural Landscape Reports (2 days) (AIA/CES)
- Identification and Evaluation of Mid-20th-Century Buildings (2 days) (AIA/CES)
- Identification and Management of Traditional Cultural Places (2 days)

Laws, Regulations, and Dispute Resolution

- Alternative Dispute Resolution: Tools for Section 106 Compliance (3 days)
- CERCLA and NHPA Coordination for Superfund Sites (2 days)
- CRM Compliance for Non-Specialists* (3 days)
- Decisionmaking for Cultural and Natural Resources in the Legal Environment (3 days)
- Integrating Cultural Resources in NEPA Compliance (2 days)
- Section 4(f) Compliance for Transportation Projects (2 days)
- Section 106: An Introduction (3 days)
- Section 106: A Review for Experienced Practitioners (2 days)
- Section 106: How to Negotiate and Write Agreements (3 days)

Native American Cultural Resources

- Consultation and Protection of Native American Sacred Lands (3 days)
- NAGPRA and ARPA: Applications and Requirements (2 days)


- **Native American Cultural Property Law (2 days)**

**Historic Property Management and Design Issues**

- **Accessibility and Historic Integrity (1 day) (AIA/CES)**
- **Green Strategies for Historic Buildings (1 day) (AIA/CES)**
- **Historic Property Management (4 days) (AIA/CES)**
- **Historic Structures Reports: A Management Tool for Historic Properties (1 day) (AIA/CES)**
- **Preservation Maintenance: Understanding and Preserving Historic Buildings (2 days) (AIA/CES)**
- **Secretary of the Interior's Standards: Review Guidelines for Boards and Commissions* (2 days) (AIA/CES)**
- **Secretary of the Interior's Standards: Treatment Considerations (2 days) (AIA/CES)**

**Curation, Conservation, and Stewardship**

- **Archaeological Curation, Conservation, and Collections Management (5 days)**
- **Cemetery Preservation (2 days)**
- **Field Conservation for Archaeologists (3 days)**
- **Photodocumentation of Cultural Resources (2 days) (AIA/CES)**

**On-site and Customized Training**

NPI offers on-site and customized training to meet specific organizational needs. Seminars may be chosen from the web site or brochure or can be tailored to create single- or multiple-day workshops at a location and time convenient to the sponsor. NPI also can develop other preservation-related training seminars.

**Who Should Attend**

NPI seminars focus on topics of current concern to professionals involved in the management and stewardship of cultural and historic resources, charged with compliance and contracting, and/or involved in the cultural resource and environmental management process.

- Accessibility coordinators
- Architects and landscape architects
- Community and Native American tribal leaders
- Contractors, public administrators, attorneys, and environmental specialists
• Economic and tourism industry professionals
• Government and public utility company officials
• Historians, architectural historians, photographers, and writers
• Historic site administrators, museum curators, and collection managers
• Housing specialists and developers
• Landmark and zoning commission members
• Managers of historic structures, landscapes, and other properties
• Planning, design, engineering, and public works professionals
• Preservation, land use, and facility planners

Seminar Format and Certificates

The seminar format encourages discussion and allows time to focus on issues of particular interest to the group. Participants return to the workplace with new skills and knowledge immediately applicable to the current concerns of their organizations or clients. NPI seminar participants receive a certificate of training completion at the end of the semester if one is requested on the registration form. Seminars vary in length. They generally are held from 9 a.m. to 5 p.m.

Faculty

NPI’s seminars are taught by nationally recognized educators, consultants, and practitioners in historic preservation, archaeology, architecture and landscape architecture, conservation, historical research, restoration, and cultural resource management. NPI reserves the right to substitute an instructor if necessary and will notify registered participants whenever possible.

• Charles A. Birnbaum, FASLA
• Allyson Brooks, Ph.D.
• Jean Carroon, AIA
• Ernest A. Conrad, P.E.
• John J. Cullinane, AIA
• Tanya Denckla Cobb
• Reba Fuller
• Dave Gamble
• Debi Hacker
• Sherry Hutt, J.D., Ph.D.
• Robert Jackson
• William Lebovich
• Barbara H. Magid
• James C. Massey
• Shirley Maxwell
• Deidre McCarthy
• C. Timothy McKeown, Ph.D.
• Alfonso A. Narvaez
• Claudia Nissley
• Deborah M. Osborne
AIA/CES

NPI is registered with the American Institute of Architects Continuing Education System and is committed to developing quality learning activities in accordance with the AIA/CES criteria. AIA members will receive 6 learning units each day for designated seminars; AIA members can complete a self-report form for other NPI seminars.

Scholarship Guidelines for Tuition Fees for National Preservation Institute Seminars

The National Preservation Institute (NPI) is pleased to offer scholarships for tuition fees for NPI seminars to participants who show a justifiable need for the seminar and tuition assistance. All requests for scholarship assistance must be received at least six weeks prior to the seminar for which assistance is requested.

Eligibility Criteria

Scholarship recipients:

- Must work at least 20 hours a week (paid or volunteer) at the organization they will represent or be a full-time student.
- Must have a commitment to improving their own performance, as well as their staff, and wish to impact the field at large.
- Must agree to attend the entire seminar.

Review Process

A selection committee will review the applications and select the scholarship recipients based on the eligibility criteria. Notification of awards will be made four weeks prior to the seminar. Preference will be given to applicants from nonprofit institutions or from diverse ethnic or racial backgrounds or representing ethnic-specific institutions, or to full-time students.

Information

For further information, contact NPI at 703.765.0100 or info@npi.org.

© 2005 National Preservation Institute   Telephone: 703.765.0100   E-mail: info@npi.org
INFORMATION ON CDF CERTIFIED ARCHAELOGICAL SURVEYOR TRAINING PROGRAM

downloaded 10/4/05 from http://www.indiana.edu/~e472/cdf/training/training.html

Date Revised: April 14, 2005

Course Title: Certified Archaeological Surveyor for CDF Projects
Sponsors: California Department of Forestry and Fire Protection (CDF)
          California Licensed Foresters Association (CLFA)
          California State Board of Forestry and Fire Protection (Board)
Type and Cost: Full, Five-Day Class - $ 550
               One-Day Refresher Course and Performance Evaluation - $150
CLFA Contact: Hazel Jackson, CLFA
              P.O. Box 1516
              Pioneer, CA 95666
              (209) 293-7323 office
              (209) 293-7544 FAX
              E-Mail: clfa@volcano.net
CDF Contact: Dan Foster, CDF
             P.O. Box 944246, Room #1516-37
             Sacramento, CA 94244-2460
             (916) 653-0839
             E-Mail: dan.foster@fire.ca.gov

Full, Five Day Course - This is the initial basic course which is intended as a practical training
course for CDF staff, foresters and other resource professionals who may encounter
archeological sites and other cultural resources in their job duties. In addition, the course
satisfies the five-year continuing education requirement of the forest practice rules. Illustrated
slide lectures, assigned reading, group workshops, group discussions, and archeological field
surveying exercises will familiarize students with the kinds of archeological materials they are
likely to encounter, their legal obligations towards them, and how to best achieve compliance
with current cultural resource mandates. Course instructors include Brian Dillon (Consulting
Archaeologist), Gerrit Fenenga, Linda Sandelin, and Dan Foster (CDF Archaeologists), Reno
Franklin (Tribal Historic Preservation Office – Stewards Point Rancheria), Rob Wood (Cultural
Resource Specialist- Native American Heritage Commission), Ted James (RPF – Sierra Pacific
Industries), and Allen Robertson (RPF – CDF). This five day course is held at the Holiday Inn in
Redding. The $550 registration fee includes a course reference manual, lunches and breaks all
five days. Students that satisfactorily complete this course will be issued a training certificate
valid for a five year period.

One Day Refresher Course - This course is only offered to those individuals who have
previously completed the initial training course. In 2005, as in past years, this course will be
held entirely in the field (a new curriculum will be established for 2006-2010 and those courses
may be held in a classroom setting). Students will work in small group settings to refresh site and artifact recognition skills and develop appropriate management strategies for sites located within mock project areas. In addition to refresher training, the course serves as a performance evaluation. In small-group settings, professional archaeologists evaluate each student's skills, knowledge and ability to conduct the archaeological tasks required by the rules of the Board of Forestry. Students must complete a homework assignment as part of this course: the completion of an archaeological site record prepared to professional standards. Students that satisfactorily complete this course will be issued a training certificate valid for a five year period. Four of these classes are scheduled for 2005. They will be held in Reeves Canyon near Ukiah. The cost of the refresher course is $150 which includes a course reference manual, a sack lunch, and refreshments during the field trip.

Class Schedule - The class schedule for 2005 is as follows:

<table>
<thead>
<tr>
<th>Class #</th>
<th>Location</th>
<th>Dates</th>
<th>Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>93R</td>
<td>Ukiah</td>
<td>September 13, 2005</td>
<td>(refresher course)</td>
</tr>
<tr>
<td>94R</td>
<td>Ukiah</td>
<td>September 14, 2005</td>
<td>(refresher course)</td>
</tr>
<tr>
<td>95R</td>
<td>Ukiah</td>
<td>September 15, 2005</td>
<td>(refresher course)</td>
</tr>
<tr>
<td>96R</td>
<td>Ukiah</td>
<td>September 16, 2005</td>
<td>(refresher course)</td>
</tr>
<tr>
<td>97</td>
<td>Redding</td>
<td>September 26-30, 2005</td>
<td>(full course)</td>
</tr>
</tbody>
</table>

How to Register - The open enrollment period to sign-up for these courses began in early February and ended on March 31, 2005. With the possible exception of one or two openings in the group of refresher courses, all classes are full and no new sign-ups will be accepted this year. You may contact Hazel Jackson to have your name included on a standby list to fill possible openings that may come up if any enrolled student drops off. A similar schedule of courses is anticipated for 2006. The enrollment period for those courses will begin in January 2006.
PART 3:

WHO YOU GOING TO CALL?
OFFICIAL STATE AND NATIONAL CONTACTS
Knowing available resources and relevant contacts can make the difference. Knowing something about the programs, policies and procedures of State and Federal commissions, agencies and departments who are responsible for implementing the laws and carrying out CRM activities, as well as the people who work there and how to reach them, can make all the difference in your efforts to effectively advocate for heritage resource protection.

Contacts for and information about key California State Commissions, Agencies, Departments and Offices are provided first (Items 3-1 through 3-8).

Next are contacts for CRM professionals working for the three largest land-managing Federal agencies in the State (Items 3-9 through 3-11): the Bureau of Land Management (BLM); USDA Forest Service (USFS); and the National Park Service (NPS).

National level CRM programs and contacts in Washington, D.C. are provided third (Items 3-12 through 3-16). All of these offer programs for Native Americans interested in learning more about and participating effectively in CRM. Several offer grants and internships.
ABOUT THE...
NATIVE AMERICAN HERITAGE COMMISSION
(drawn from NAHC Website and staff 9/05)

Mailing Address:
915 Capitol Mall, Room 364
Sacramento, California 95814
(916) 653-4082
(916) 657-5390 - FAX
http://www.nahc.ca.gov for website
nahc@pacbell.net for correspondence

CONTACTS

NAHC STAFF

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(916) 653-4082

Debbie Pilas-Treadway, Environmental Scientist III
(916) 653-4038, email dpt_nahc@pacbell.net

Rob Wood - Environmental Scientist III
(916) 653-4040, email rw_nahc@pacbell.net
Reviews projects and issues for Fresno, Kern, Kings, Los Angeles, Orange, San Luis Obispo, Santa Barbara, Tulare, and Ventura counties.

Carol Gaubatz - Program Analyst
(916) 653-6251, email cg_nahc@pacbell.net
Reviews projects and issues for Del Norte, Humboldt, Imperial, Inyo, Lassen, Modoc, Mono, Riverside, San Bernardino, San Diego, Shasta, Siskiyou, and Trinity counties.
Larry Myers, Executive Secretary - Pomo

Executive Secretary, Larry Myers was appointed in July 1987 by Governor Deukmejian. Prior to this appointment, he held several management positions in the Department of General Services and the Department of Education. Mr. Myers was born and raised on the Pinoleville Indian Rancheria outside of Ukiah California. He is the son of Tillie (Myers) Hardwick. Ms. Hardwick filed and won a lawsuit against the Bureau of Indian Affairs to regain tribal status, which was lost under the California Rancheria Act. He received his Bachelor of Arts degree in Sociology from San Jose State College. He received his Master's degree in Management from the University of Utah. Mr. Myers served in the US Army.

Governor Pete Wilson appointed Mr. Myers to the Sesquicentennial Commission to ensure that Native Americans were not left out of the process and that the gold rush history was truthfully told. He was a member of the Department of Forestry's Native American Advisory Council. Mr. Myers has taken a leading role in facilitating the unification of Ishi's remains by providing testimony to the legislature and assisting the Attorney General's office. He also provided testimony before state and federal agencies regarding Indian issues. He assisted in the development of the Federal Oversight Hearing on Native American Legislation. Mr. Myers is a member of the Committee on Native American Graves Protection and Repatriation Act (NAGPRA) for implementation by the California Department of Parks and Recreation. Mr. Myers has assisted and provided training to State and Federal agencies as well as Native Americans on NAGPRA. Mr. Myers is a member of the Commemorative Seal Advisory Committee. This committee is working on a commemorative seal to be placed on the west steps of the State Capital that will memorialize California Indians.

COMMISSIONERS

William (Bill) Mungary, Chairperson - Paiute/White Mountain Apache

Governor George Deukmejian appointed Commissioner William (Bill) Mungary of Bakersfield to the Native American Heritage Commission on December 17, 1987. Mr. Mungary is the Director of the Community Development Program, Resource Management Agency of Kern County, a position he has held since 1977. He received his Bachelor of Arts degree in International Relations Curriculum from the University of California at Los Angeles. He received his Masters in Business Administration in General Management at the University of California at Los Angeles. He served in the US Air Force and achieved the rank of Captain.

Mr. Mungary is on the Board of Directors of the National Association of County Community and Economic Development and founding member of the American Indian Council of Central California, Inc., California Association for Local Economic Development, and the Native American Heritage Preservation Council of Kern County, where he served on the Board of Directors from 1991-1995. He is a member of the Federal Advisory Council of California Indian Policy and the Committee on Native American Graves Protection and Repatriation Act Implementation for the California Department of Parks and Recreation. In March of 1995, Governor Wilson appointed Mr. Mungary to serves as a member of the California Rural Development Council.
Clifford E. Trafzer, Vice Chairperson  Yucaipa  - Wyandot -

Governor George Deukmejian appointed Commissioner Trafzer of Yucaipa, to the Native American Heritage Commission on December 1, 1988. Dr. Trafzer is a Professor of History and Director of Native American Studies at the University of California, Riverside. Trafzer has a special research interest in Native American religions, and teaches courses pertaining to native religions. Trafzer received his Bachelor and Master's degrees in history at Northern Arizona University, focusing on the history of Navajo people. He received his Ph.D. in History from Oklahoma State University. Dr. Trafzer has published many scholarly books and articles on Native American history and has been the winner of three book awards.

For the past six years Trafzer has served as Director of the Costo Historical and Linguistics Native American Research Center, a center devoted to community-based research with California tribes and those of the immediate area. He is on the Board of Directors for the Native American Land Conservancy and a member of the Cultural Committee for the Twenty-Nine Palms Band of Mission Indians.

Fawn E. Morris  Crescent City  - Yurok -

Governor Pete Wilson appointed Commissioner Morris, of Crescent City, to the Native American Heritage Commission on June 19, 1996. Commissioner Morris has owned and operated several small businesses. Mrs. Morris received her teaching credential from the University of California, Berkeley and tutored at-risk Native American children for seven years.

Mrs. Morris is a member of the Yurok Tribe. She serves as a member of the tribe's Cultural Committee and Native American Graves Protection Act Committee. Mrs. Morris has served on the Board of Directors of the Agricultural Fair in Del Norte County since 1992 and is a member of the American Business Women's Association.

Katherine M. Saubel  Banning  - Cahuilla -

Governor George Deukmejian appointed Commissioner Saubel, of Banning, to the Native American Heritage Commission on December 17, 1987. Commissioner Saubel was born on the Los Coyotes Reservation where she is an honored elder of that tribe. Mrs. Saubel, together with her late husband, Mariano, founded the Malki Museum, the first non-profit Indian museum on a California Indian Reservation. She is the president, curator, and Chairperson of the editorial board of the Malki Museum. Mrs. Saubel was a light machine operator for Deutsch Company from 1964 until her retirement in 1982. She is a member of the Ladies Auxiliary of the Veterans of Foreign Wars. She has served as a member of the Los Coyotes Tribal Council and the Mothers' Club of the Morongo Indian Reservation. She served for many years as a member of the Riverside County Historical Commission, who in 1986 named her County Historian of the Year. Saubel has lectured widely and worked with many noted anthropologists and linguists. She has testified before the US Senate Select Committee on Indian Affairs. Commissioner Saubel was the first California Native American woman to be inducted into the National Women's Hall of Fame in October 9, 1993.

Edward Albert Jr.  Malibu

Re-appointed to the NAHC on May 2, 2000, Mr. Albert served on the Commission from March 1998 to January 1999. His experience with Native American affairs includes founding the Native American Heritage Association, which led to the forming of a Native American task force within the City of Malibu. This task force worked toward the protection and preservation of Native American cultural
resources. Mr. Albert is also actively involved in the film industry, serving as an actor, director, writer and producer.

**Jill Sherman**

Ms. Sherman comes to the NAHC with a wealth of experiences in Native American affairs, including directing the Environmental Protection Agency's General Assistance Program for the Pechanga Band and participating in the North County American Indian Education Group. Furthermore, she has the distinction of being the youngest female elected to the Hoopa Tribal Council. Ms. Sherman is active in San Diego with the Southern California Indian Human Resources Agency, which provides employment training and opportunities for Native Americans in urban San Diego. Ms. Sherman earned a Bachelor of Arts degree from Humboldt State University.

Note: Nine (9) Commissioners make a full compliment for the Commission.


To write to the Governor requesting that he act on Commission applications currently on file, write to:

**Governor Arnold Schwarzenegger**
State Capitol Building
Sacramento, CA 95814
Phone: 916-445-2841
Fax: 916-445-4633

To send an Electronic Mail please visit:
[http://www.govmail.ca.gov](http://www.govmail.ca.gov)

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**NATIVE AMERICAN HERITAGE COMMISSION STRATEGIC PLAN**

(from NAHC website [http://www.nahc.ca.gov](http://www.nahc.ca.gov) 9/16/00)

**EXECUTIVE SUMMARY**

This strategic plan has been developed to focus the growth of the Native American Heritage Commission to assist the public, the development community, local and federal agencies, educational institutions and California Native Americans to better understand problems relating to the protection and preservation of cultural resources. It is hoped that this document will serve as a tool to resolve these problems and create an awareness among lead agencies and developers of the importance of working with the people that are directly affected by their actions.
This strategic plan contains six components. The mission statement, principles, vision, description, goals and objectives measures are the key elements to this plan. The first three elements identify the reason the Commission was created and the philosophy and values on which the Commission basis its operation.

The program description is an important element because it describes the operations of the office. The assessment summary will provide the reader a clear understanding of the restrictions that the office encounters and be pleased with the success that has been achieved in spite of the adversities.

The identified goals and objectives go beyond the duties and responsibilities identified in the Public Resources Code §5097.9 et. al. The accomplishment of these goals will be a major step in achieving the vision as outlined in this plan.

The final important element is the performance measure. This tool evaluates the activities and efforts made in achieving the goals and objectives. This plan is the Commission's hope for the future.

**MISSION STATEMENT**

The Mission of the Native American Heritage Commission is to provide protection to Native American burials from vandalism and inadvertent destruction, provide a procedure for the notification of most likely descendants regarding the discovery of Native American human remains and associated grave goods, bring legal action to prevent severe and irreparable damage to sacred shrines, ceremonial sites, sanctified cemeteries and place of worship on public property, and maintain an inventory of sacred places.

**PRINCIPLES**

The Commission will exercise the following principles in an effort to be responsive to its internal and external communities:

- The Commission must be sensitive to all California Native Americans.
- The Commission will facilitate a cooperative working relationship with developers, private land owners, local agencies, and the California Native American community.
- The Commission will administer the thorough and complete application of the Public Resources Code §5097.9 et. al. and the Health and Safety Code §7050.5.
- The Commission will not express its opinion regarding recommendations for the treatment and disposition of Native American human remains and associated grave goods.
- The Commission will not become involved in tribal politics.
- The Commission will treat all Native American groups, tribes, and individuals with respect and dignity.
The Commission will conduct State business in a professional and sensitive manner.

VISION

California Native American cultural resources, habitation sites, burial sites, sacred sites, ceremonial sites, and places of worship are limited resources for Indian and non-Indian people. They are important to the culture and spiritual beliefs of California Native Americans. Therefore, they must be protected in a sensitive manner that involves local Native American people. An effective protection program will benefit all citizens of California.

Developers, private property owners, lead agencies, and law enforcement agencies will become aware of the importance of cultural resources to all the citizens of California. Additional State legislation and local ordinances will be enacted to more effectively protect cultural resources.

Tribal governments, Indian organizations, and most likely descendants will become knowledgeable of effective mitigation measures, treatment and disposition of Native American human remains and associated grave goods, protection of sacred places, and state and federal laws. All Native Americans will be permitted access to burials, sacred sites, ceremonial places, and places of worship on public and private property. A cooperative working relationship among California Native Americans, developers, private property owners, and lead agencies will be established. This is a vision that all Californians will come together to protect and preserve this valuable State heritage.

DESCRIPTION

The Native American Heritage Commission was established in 1976. It was created because California Native Americans were demanding protection of their burial grounds from vandalism, destruction and scientific research. Many human remains were left baking in the sun by workers, as large burial mounds were uncovered during construction for housing and roads. These remains were simply ignored by the workers or collected by archaeologists and amateur archaeologists.

Thus, the Commission was created by the Legislature and approved by the Administration in an effort to rectify some of these ills. Under this program, California's most likely descendants have a voice in determining the treatment and disposition of Native American human remains. The right of most likely descendants to control analysis of Native American remains was affirmed by the State Appellant Court in a decision known as the "Van Horn Case".

In addition to the insensitive wholesale destruction of burial sites, archaeologists were collecting Native American human remains at an alarming rate. Remains were being warehoused at locations across California for future research projects. In many instances, curators and researchers had no idea how many remains they had or any province regarding the remains. The taking of these remains was a continuation of the behavior toward Native Americans between 1850 and 1900.

During the period between 1850 and 1900, 90% of the California Indian population perished from disease, starvation, poisoning, or gunshot wound. Until 1983, people were collecting the human remains without any care, worry or concern for what the Native people were feeling or the
religious beliefs of these people. All of this was legal; therefore, impossible for Native Americans to stop until appropriate legislation was passed.

It has become imperative for the Commission to act as liaison in disseminating and interpreting laws, rules and procedures affecting the large number of federally recognized tribes, tribal groups applying for federal recognition, California Native American organizations, and individuals concerned with the protection and involvement of Native American cultural resources and human remains. The Commission is an essential hub for information flow. Many lead agencies and developers are unaware of tribal concerns and who to contact to solicit information regarding impacts to cultural resources.

Too often, developers are unaware of their responsibilities as defined in the Health and Safety Code and Public Resources Code that apply to cultural resources and the discovery of Native American human remains. One of our prime duties continues to be the education of these people. There have been several occasions in which the coroner’s offices were not aware of the law. There have been some instances in which we have met resistance from various coroners as to their responsibility as defined in the Health and Safety Code.

Our involvement has not been limited to working with developers and lead agencies. The Commission works closely with museums, community colleges, state universities, private universities, and the University of California campuses. Our involvement often deals with the Native American Graves Protection and Repatriation Act of 1990. Under this law, museums, universities, and state agencies that receive federal funds must complete inventory and summary reports of human remains, funerary objects, objects of cultural patrimony, and sacred objects and must identify the culturally affiliated tribal groups. These agencies rely upon the Commission as a prime resource for assistance in identifying and locating possible culturally affiliated tribal groups.

The Native American Heritage Commission works cooperatively on an ongoing basis with the California Department of Transportation (Caltrans), California Department of Parks and Recreation (CDPR), California Department of Forestry and Fire Protection (CDF), California Department of Water Resources, California Department of Fish and Game, and California Arts Council.

During the construction of the highway system in California, many Native American burials were unearthed. Today, during repairs, replacement, or new construction, Caltrans continues to encounter Native American human remains, associated burial goods, and impacts cultural resources. The office has assisted Caltrans to develop an operations manual for use of their employees regarding the discovery and protection of human remains and working with local tribes.

The California Department of Parks and Recreation owns or manages many acres of land. Many of these parks contain cultural resources and sacred/religious sites. The office is consulted by the department when interpretive centers are being developed. The office works closely to assure that tribal groups are included in the planning so cooperative working relationships are developed that will lead to accurate information regarding the local Native Americans customs and traditions.
The Department of Forestry and Fire Protection approves timber harvest plans on private land. Many of the private lands contain cultural resources and Native American burial sites. The Commission continues working with this department to develop timber harvest plans that contain regulations to avoid the destruction of sites and to protect burials. Efforts have been made to include Native Americans on the timber harvest review teams.

At the request of local Indian people, this office has worked with the California Department of Fish and Game to remove the limitations for the collection of seaweed. Native Americans use this not only for consumption, but in some instances it is used in ceremonies. The Department has removed its restrictions on weight limitations and no impact to the seaweed environment has resulted.

At the federal level, this office deals with the Bureau of Land Management, U.S. Forest Service, National Park Service, Bureau of Indian Affairs, Federal Highways Administration and Army Corps of Engineers.

Often, developers encounter Native American human remains and associated grave goods during the development of a construction project. The number of human remains can range in the hundreds. The number of associated grave goods can be in the thousands. Discoveries of this nature require extreme sensitive treatment. Many times disagreements between the most likely descendent and the developer arise. This office works with both parties in an effort to resolve problems and identify a course of action that is acceptable to everyone. Usually, the developer is concerned with added cost and the projects public image. The most likely descendent is concerned with unnecessary removal of burials and would prefer the project be redesigned.

Daily workload of the office includes review of environmental impact reports for projects on federal land and under state jurisdiction, negative declarations, mitigated negative declarations and timber harvest plans. The cultural resource section of each report is reviewed for adequate mitigation and verification if appropriate local tribal groups have been contacted regarding the project. Reports are also checked against our Sacred Lands File.

The office must also be responsible to the nine member Commission who convene in session to hear and act upon additional concerns that tribal groups and individuals present. The nine commissioners represent different tribal groups, different perceptions and beliefs; therefore, are able to be responsive to concerns brought before them.

GOALS AND OBJECTIVES

Goal: Promote adoption of protective measures by city/county agencies to protect cultural resources.

Objective: Meet and confer with planning departments and other interested parties to assist in the development of local ordinances.

Goal: Training for law enforcement agencies, public agencies, archaeologists, and Native Americans.

Objective: Implementation of appropriate laws and enforcement responsibilities - individuals and
agencies impacted by the discovery of Native American human remains.

**Sacred Lands File**
- Review and update information;
- Notify property owners who have listed sites on their property;
- Consult with Native Americans regarding the addition of sites to the Sacred Lands File.

**Goal:** Training for Native American Heritage Commission staff as it relates to protection of cultural resources.

**Objectives:**
- Environmental Laws,
- State and Federal legislative changes and court decisions,
- Cultural resources,
- Archaeological fieldwork,
- Enthnohistory library.

**Goal:** Determine the Most Likely Descendants (MLDs).

**Objective:** Request documentation to assist the Commission in the determination of the Most Likely Descendant. Compile and interpret documentation from Most Likely Descendants for input to database.

**Goal:** Develop a means of disseminating information and provide a forum to address concerns.

**Objectives:**
- Commission meetings - Increase regional meetings.
- Newsletter - Semi-annual publication.
- Internet - Homepage.
- Information publication - Professional Guide; Native American Heritage Commission Information Guide.
ABOUT THE...

CALIFORNIA OFFICE OF HISTORIC PRESERVATION (OHP)

(downloaded 10/3/05 from website at http://www.ohp.parks.ca.gov/)

Office of Historic Preservation
California Department of Parks and Recreation
1416 9th Street, Room 1442-7
Sacramento, CA 95814
P.O. Box 942896 Sacramento, CA 94296-0001
TEL: 916-653-6624
FAX: 916-653-9824
calshpo@ohp.parks.ca.gov

STAFF CONTACTS

State Historic Preservation Officer (SHPO)
The SHPO is responsible for the operation and management of the Office of Historic Preservation, as well as long range preservation planning. The Governor appoints the SHPO, in consultation with the State Historical Resources Commission and the Director of the Department of Parks and Recreation.

The SHPO assists the Commission in accomplishing its goals and duties by developing and administering a program of public information, education, training, and technical assistance. The SHPO also serves as Executive Secretary to the Commission and is responsible for developing an administrative framework for the Commission and implementing the Commission's preservation programs and priorities.

Milford Wayne Donaldson, FAIA - State Historic Preservation Officer
On Wednesday, 7 April 2004, Governor Arnold Schwarzenegger announced the appointment of Milford Wayne Donaldson as the new State Historic Preservation Officer. Mr. Donaldson was sworn in during ceremonies held at the State Capitol on April 9. The SHPO serves as chief administrative officer of the Office of Historic Preservation in Sacramento and as Executive Secretary of the State Historical Resources Commission.

Prior to his appointment as SHPO, Mr. Donaldson had served as president of award winning Architect Milford Wayne Donaldson, FAIA, since 1978, specializing in historic preservation services. He is licensed to practice architecture in California, Nevada and Arizona and holds a certified license from the National Council of Architectural Registration Boards. Mr. Donaldson is affiliated with several historical and preservation organizations and is a past president of the California Preservation Foundation (CPF) and past chairs of the State Historical Building Safety Board, the State Historical Resources Commission, and the Historic State Capitol Commission.

Previously an instructor at California Polytechnic State University, San Luis Obispo, he continues to lecture at California community colleges and universities. Mr. Donaldson holds a Bachelor of Architecture and a Bachelor of Science in Engineering from California Polytechnic
State University, San Luis Obispo. He engaged in post graduate studies at Uppsala University, Sweden, and received a Master of Science degree in Architecture from University of Strathclyde, Glasgow, Scotland, and a Master of Arts degree in Public History and Teaching from University of San Diego.

Stephen Mikesell, Deputy State Historic Preservation Officer

Administrative Support
Courtney Jacobsen, Park Aide
David Riem, Park Aide
Diane Thompson, Office Technician
Camille Valencia, Administrative Assistant

PROJECT REVIEW UNIT
- Mike McGuirt, Associate State Archaeologist (Interim Supervisor)
  Dwight Dutschke, Associate Park & Recreation Specialist
  Kim Klarenbach-Leeds, Office Technician
  Natalie Lindquist, State Historian II
  William Soule, Associate Archaeologist
  Kelly Hobbs, Assoc. Environmental Planner (Architectural Historian)
  Julia Huddleston, Assoc. Environmental Planner (Archaeologist)

INCENTIVES & ARCHITECTURAL REVIEW UNIT
- Timothy Brandt, AIA, Senior Restoration Architect (Supervisor)
  Robert Mackensen, Senior Architect (Retired Annuitant)
  Jeanette Schulz, Associate State Archaeologist

LOCAL GOVERNMENT ASSISTANCE & INFORMATION MANAGEMENT UNIT
- Lucinda Woodward, State Historian III (Supervisor)
  Eric Allison, Associate Information Systems Analyst
  Shannon Lauchner, Contract Data Assistant
  Joseph McDole, State Historian II
  Michelle Messinger, State Historian II
  Marie Nelson, State Historian II
  Cheri Stanton, Office Technician
  John Thomas, State Historian II
  Courtney Belville, Student Assistant
  Laura Gallegos, Student Assistant
  Tony Newman, Student Assistant

MAIN STREET & GRANTS UNIT
- Steade Craigo, FAIA, Senior Restoration Architect (Supervisor)
  Grants Program Manager

About the ... California Office of Historic Preservation (OHP): Contacts, Mission, Responsibilities 2 of 3
OHP Mission and Responsibilities

California is characterized by a rich historical past and a bright, promising future. The State's historical resources represent the contributions and collective human experiences of a diversified population spanning 10,000-12,000 years of occupancy in California. This heritage is embodied in the cultural and historical landscapes of California as evidenced by the archaeological remains, historic buildings, traditional customs, tangible artifacts, historical documents, and public records extant in California. All these evidences of the past contribute to the sum total of California's history. Such historical resources provide continuity with our past and enhance our quality of life.

The Mission of the Office of Historic Preservation and the State Historical Resources Commission, in partnership with the people of California and governmental agencies, is to preserve and enhance California's irreplaceable historic heritage as a matter of public interest so that its vital legacy of cultural, educational, recreational, aesthetic, economic, social, and environmental benefits will be maintained and enriched for present and future generations.

The Office of Historic Preservation's responsibilities include:

- Identifying, evaluating, and registering historic properties;
- Ensuring compliance with federal and state regulatory obligations;
- Cooperating with traditional preservation partners while building new alliances with other community organizations and public agencies;
- Encouraging the adoption of economic incentives programs designed to benefit property owners;
- Encouraging economic revitalization by promoting a historic preservation ethic through preservation education and public awareness and, most significantly, by demonstrating leadership and stewardship for historic preservation in California.
ABOUT THE ...
STATE HISTORICAL RESOURCES COMMISSION

(Downloaded 10/3/05 from http://www.ohp.parks.ca.gov/default.asp?page_id=1067)

Office of Historic Preservation
P.O. Box 942896
Sacramento, CA 94296-0001
TEL: 916-653-6624
FAX: 916-653-9824

COMMISSIONERS:

LAUREN W. BRICKER, Ph.D., Chairperson

CLAIRE BOGAARD
KATHLEEN GREEN
LUIJS G. HOYOS, AIA
MARY L. MANIERY
CAROL L. NOVEY

MILFORD WAYNE DONALDSON, Executive Secretary

CAMILLE VALENCIA, Administrative Assistant
916-653-7113
916-653-7718 (FAX)

NOTE: Several vacancies exist. If interested in applying, please contact Diane Thompson by email or at 916-653-0877 for more information.

RESPONSIBILITIES OF THE COMMISSION

Five members of the Commission shall be recognized professionals in the disciplines of history, pre-historic archaeology, historic archaeology, architectural history, and restoration architecture. One member shall be knowledgeable in ethnic history; one member shall be knowledgeable in Folklife; and two members shall represent the public or possess expertise in fields that the Governor deems necessary or desirable to enable the Commission to carry out its responsibilities. The State Historic Preservation Officer (SHPO) serves as Executive Secretary to the Commission.
In accordance with State law (California Public Resources Code Section 5020.4), the primary responsibility of the Commission is to review applications for listing historic and archaeological resources on the National Register of Historic Places, the California Register of Historical Resources, and the California Historical Landmarks and California Points of Historical Interest registration programs.

The Commission is also charged with the following responsibilities:

- Conduct a statewide inventory of historical resources and maintain comprehensive records of these resources.
- Develop and adopt criteria for the rehabilitation of historic structures.
- Establish policies and guidelines for a comprehensive statewide historical resources plan.
- Submit an annual report to the Director of the Department of Parks and Recreation and the State Legislature giving an account of its activities, identifying unattained goals of plans and programs, and recommending needed legislation for the support of these programs.
- Consult with and consider the recommendations of public agencies, civic groups, and citizens interested in historic preservation.
- Develop criteria and procedures based upon public hearings and active public participation for the selection of projects to be funded through the National Historic Preservation fund and other federal and state grants-in-aid programs.
The California Historical Resources Information System (CHRIS) includes the statewide Historical Resources Inventory (HRI) database maintained by OHP and the records maintained and managed, under contract, by twelve independent regional Information Centers (ICs).

Individuals and government agencies seeking information on cultural and historical resources should begin their research by contacting the regional Information Center which services the county in which the resource is located. The IC Roster identifies the locations, contact information, and counties served by each regional IC.

Information Centers (ICs) – see IC Roster.
- Provide archeological and historical resources information, on a fee-for-service basis, to local governments and individuals with responsibilities under the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and the California Environmental Quality Act (CEQA), as well as to the general public.
- Integrate newly recorded sites and information on known resources into the California Historical Resources Inventory.
- Collect and maintain information on historical and archeological resources developed under projects or activities which were not reviewed under a program administered by OHP, including:
  - Information on individual resources identified and evaluated in CEQA documents;
Archaeological surveys performed by academic or avocational groups which are not associated with federal projects; and

- Archeological and/or historical resource surveys conducted by agencies for planning purposes that do not involve an undertaking subject to review under Section 106 of the NHPA.

- Maintain a list of consultants who are qualified to do work within their area.

The **Historical Resources Inventory (HRI)** maintained by OHP includes *only* information on historical resources that have been identified and evaluated through one of the programs that OHP administers under the National Historic Preservation Act or the California Public Resources Code. The HRI includes data on:

- Resources evaluated in local government historical resource surveys partially funded through Certified Local Government grants or in surveys which local governments have submitted for inclusion in the statewide inventory;
- Resources evaluated and determinations of eligibility (DOEs) made in compliance with Section 106 of the National Historic Preservation Act;
- Resources evaluated for federal tax credit certifications;
- Resources considered for listing in the National and California Registers or as California State Landmarks or Points of Historical Interest.
THE CALIFORNIA HISTORICAL RESOURCES INFORMATION SYSTEM

The following institutions are under agreement with the Office of Historic Preservation to:

1. Integrate information on new Resources and known Resources into the California Historical Resources Information System.
2. Supply information on resources and surveys to government, institutions, and individuals who have a need to know.
3. Supply a list of consultants qualified to do historic preservation fieldwork within their area.

**COORDINATOR:** Mr. Eric Allison, Associate Information Systems Analyst, (916) 653-7278

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<tr>
<td>Ms. Leigh Jordan, Coordinator</td>
<td>Northwest Information Center&lt;br&gt;Sanoma State University&lt;br&gt;1303 Maurice Avenue&lt;br&gt;Rohnert Park, CA 94928</td>
<td>(707) 664-0880&lt;br&gt;(707) 799-7313&lt;br&gt;Fax (707) 664-0890</td>
<td><a href="mailto:eighjordon@sonoma.edu">eighjordon@sonoma.edu</a></td>
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<tr>
<td>Dr. Antoinette Martinez, Coordinator</td>
<td>Northeast Information Center&lt;br&gt;California State University, Chico&lt;br&gt;Building 25 Suite 201&lt;br&gt;Chico, CA 95929-0377</td>
<td>Attn: Amy Huberland, Asst Coordinator&lt;br&gt;(530) 886-8258&lt;br&gt;Fax (530) 886-4413</td>
<td><a href="mailto:neinfocnt@csuchico.edu">neinfocnt@csuchico.edu</a></td>
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<td>Alameda, Contra Costa, Lake, Marin, Mendocino, Mono, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Yolo</td>
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<tr>
<td>Dr. Lee Simpson</td>
<td>North Central Information Center&lt;br&gt;California State University, Sacramento&lt;br&gt;6000 J Street, Adams Building, Suite #103&lt;br&gt;Sacramento, CA 95819-6100</td>
<td>Attn: Ms. Sally Torpy&lt;br&gt;(916) 278-6217&lt;br&gt;Fax (916) 278-5162</td>
<td><a href="mailto:ncic@csus.edu">ncic@csus.edu</a></td>
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<td>Dr. Robert Yohe, Coordinator</td>
<td>Southern San Joaquin Valley Information Center&lt;br&gt;California State University, Bakersfield&lt;br&gt;9001 Stockdale Highway&lt;br&gt;Bakersfield, CA 93311-1099</td>
<td>Attn: Adele Baldwin&lt;br&gt;(661) 664-2289&lt;br&gt;Fax (661) 664-2415</td>
<td><a href="mailto:abaldwin@csubak.edu">abaldwin@csubak.edu</a>&lt;br&gt;<a href="http://www.csubak.edu/scic/">http://www.csubak.edu/scic/</a></td>
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<td>Amador, El Dorado, Nevada, Placer, Sacramento, Yuba</td>
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<td>Dr. Michael A. Glassow, Coordinator</td>
<td>Central Coastal Information Center&lt;br&gt;University of California, Santa Barbara&lt;br&gt;93106</td>
<td>(805) 883-2474&lt;br&gt;Fax: (805) 883-5707</td>
<td><a href="mailto:ccic@anlh.ucsb.edu">ccic@anlh.ucsb.edu</a></td>
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Repatriation Oversight Commission (ROC) meetings and notices are posted in the near-term on the Native American Heritage Commission’s website at www.nahc.ca.gov

The long-term goal is to establish an independent website for the ROC.

Information provided on 9/30/05 by Debbie Pilas-Treadway of the Native American Heritage Commission, Sacramento.
## CDF Staff Archaeologists

**Updated August 22, 2005**

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<td>Name</td>
<td>CDF Archaeology Office/Unit Address/Box</td>
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Native American Guide to Timber Harvesting on Non-Federal Lands in California

prepared by:
Daniel G. Foster and Linda C. Sandelin
California Department of Forestry and Fire Protection

Revised Date: March 5, 2003

Introduction

This report was developed as an informational guide written specifically for the Native American community in California. Its purpose is to provide an overview of the rules and regulations that govern commercial timber operations on private and other non-federal lands within California and to clarify the opportunities for Native Americans to participate in the development and review of Timber Harvesting Plans (THPs) to help protect cultural resources. This report was first written in 1998 by the Board of Forestry and Fire Protection’s Native American Advisory Committee. It was completely re-written by CDF to reflect current procedures and to be inserted into the 2003 revision of the Reference Manual and Study Guide for CDF’s Archaeological Training Program. This report will also be posted on the Native American Contacts page of the CDF Archaeology Program Web Site at the following address:
http://www.indiana.edu/~e472/cdf/contacts/

Definition of Key Terms:

California State Board of Forestry and Fire Protection (Board): The California State Board of Forestry and Fire Protection is a policy-making board that has authority to adopt regulations governing commercial timber operations on private and other non-federal lands within California. These regulations are known as the Forest Practice Rules. One of the overall objectives of the rules is to assure, where feasible, that the productivity of timberlands is restored, enhanced, and maintained, and that natural and cultural resources are adequately protected. The Board holds public meetings during the first week of every month except December. There are nine members: five from the general public, three from the timber industry and one from the range-livestock industry. Members are appointed by the Governor for four-year terms and must be confirmed by the State Senate.

California Department of Forestry and Fire Protection (CDF): CDF is a state agency whose mission is to protect the people of California from fires, respond to emergencies, and protect and enhance California’s forest, range, and watershed values, providing social, economic, and environmental benefits to rural and urban citizens. One of CDF’s major programs to accomplish this mission is Forest Practice. In this program, CDF acts as lead agency pursuant to the California Environmental Quality Act (CEQA) for review and approval of Timber Harvesting Plans (THPs) that are subject to the requirements contained in the Forest Practice Rules. CDF has approximately 150 Registered Professional Foresters (RPFs) and 6 professional archaeologists on staff that work in the Forest Practice Program to review THPs.
Forest Practice Rules (Rules): These are the specific regulations adopted by the Board that govern commercial timber operations on private and other non-federal lands within California. The statutory authority for these regulations is found in the Z’Berg-Nejedley Forest Practice Act (PRC Section 4511 et seq.) and CEQA (PRC Sections 21000 through 21178). CDF publishes a copy of the current rules each year. A complete copy of the current rule book may be purchased for five dollars by submitting a written request to CDF, Attention: Sherry Habon, Room #1516-25, P.O. Box 944246, Sacramento, CA 94244-2460. The current Forest Practice Rules are also available from CDF’s web site at: http://www.fire.ca.gov/ResourceManagement/TiInCA.asp

Licensed Timber Operator (LTO): The LTO is licensed to engage in commercial timber operations, including logging and road building for THPs. The LTO is required to take a class on regulations and environmental protection provided by CDF before receiving a license. A section on cultural resources is included in this training. If a previously unidentified site is discovered during timber operations, the LTO is required to stop timber operations within 100 feet of the discovered site, immediately notify CDF, and CDF will immediately notify Native Americans. Timber operations can not continue in area containing the site until an amendment containing protection measures is approved by CDF. LTOs are shown the location of all areas within a THP that require protection, including archaeological sites. This is done through an on-the-ground meeting with the RPF or the RPF’s supervised designee. LTOs are often not told exactly what type of forest resource exists within the area they are instructed to avoid in order to keep cultural resource locations confidential.

Mitigation Measures: These are changes made to the proposed project or steps taken to ensure that significant archaeological or historical sites identified in a THP are adequately protected. Avoidance of activities that cause damaging effects is the preferred protection measure specified in the rules.

Native Americans: as defined in the Forest Practice Rules and used throughout this report, the term Native Americans means the Native American Heritage Commission and those local Native American tribal groups and individuals to be notified or consulted pursuant to the Forest Practice Rules as listed on CDF’s Native American Contact List.

Native American Contact List: means the list that identifies those Native Americans that must be notified or consulted pursuant to the Forest Practice Rules. CDF is responsible to maintain this list but seeks advice provided by the Native American Heritage Commission (NAHC) and CDF’s Native American Advisory Council (NAAC). The list identifies the appropriate points of Native American tribal contact for notification and consultation during preparation and review of THPs as well as other types of CDF projects. It is organized by counties or portions of counties. All federally recognized tribal governments in California are automatically placed on the list. The list also includes other California Native American organizations and individuals that CDF chooses to place on the list based upon demonstrated knowledge concerning the location of archaeological or cultural resources within California. The NAHC is also included as a required contact for each county to enable the NAHC to complete a check of their Sacred Lands File. The list is updated monthly and is posted on CDF’s web site at http://www.indiana.edu/~e472/cdf/contacts/NACL.htm
Native American Archaeological or Cultural Site: means any archaeological or other cultural resource that is associated with Native Americans. These sites must be identifiable by a specific physical location containing specific physical attributes. Native American archaeological or cultural sites include but are not limited to: village sites, camp sites, petroglyphs, prehistoric trails, quarries, milling stations, cemeteries, ceremonial sites or traditional cultural sites and properties.

Native American Advisory Council (NAAC): The NAAC is a 9-member advisory group appointed by the CDF Director to advise the Department on Native American issues pertaining to CDF's programs. The NAAC meets, or holds conference calls, approximately four times per year. Information pertaining to CDF's Native American Advisory Council can be found on CDF's website at: http://www.indiana.edu/~e472/cdf/contacts/naac.html

Registered Professional Forester (RPF): The RPF is licensed to practice forestry in California and is responsible for the contents of the THP. To become registered, one must have at least seven years of experience in the practice of forestry and pass a comprehensive written examination. In order for an RPF to survey for archaeological sites, satisfactory completion of cultural resource identification and management training is required. This training includes a component delivered by a Native American instructor. The RPF must hire a professional archaeologist if the required training is lacking. The RPF is required by the rules to notify Native Americans about a proposed THP, seek information about cultural sites that might be present, and afford Native Americans the opportunity to submit comments during the THP review process.

Significant Archaeological or Historical Site: means a specific cultural resource location within a THP. It may or may not contain artifacts or objects but evidence must clearly demonstrate a high probability that the site meets one or more of the following criteria: (a) Contains information needed to answer important scientific research questions. (b) Has a special and particular quality such as the oldest of its type or the best available example of its type. (c) Is directly associated with a scientifically recognized important prehistoric or historic event or person. (d) Involves important research questions that historical research has shown can be answered only with archaeological methods. (e) Has significant cultural or religious importance to Native Americans as described in the above-listed definitions for Native Americans and Native American Contact List.

Timber Harvesting Plan (THP or Plan): The THP or plan is a comprehensive document prepared by an RPF and submitted to CDF for review. Timber operations may not begin until CDF approves the plan, and the RPF is required to follow the provisions specified in the plan. The THP addresses operational aspects of the timber operation (such as how the area will be logged) as well as environmental impact information and specific protection measures. The THP is a public document and members of the public may obtain a copy (for purchase) at the appropriate CDF Regional Office. Information pertaining to cultural resources is not included in the main body of the THP but is contained in a separate Confidential Archaeological Addendum (CAA) that is not available to members of the general public. This procedure provides CDF with the ability to
identify and protect cultural resources without disclosing the locations of such resources to members of the public.

**THP Preparation Procedures**

The RPF writing the plan is required to ensure the completion of a number of procedural steps during the development of a THP to identify and protect cultural resources. These steps are:

1. **Records Check.** The RPF must conduct an archaeological records check at the appropriate Information Center of the California Historical Resource Information System. These Centers keep the official archaeological records for California. By checking at the Center, any known recorded archaeological or historical site that is mapped within the proposed THP become identified, and must be addressed in the plan.

2. **Consultation with Native Americans.** The RPF is required to provide written notification to Native Americans about the preparation of a plan. The primary purpose for this notification is to provide Native Americans an opportunity to disclose the existence of any Native American archaeological or cultural sites that are potentially within or adjacent to the plan area and provide Native Americans an opportunity to comment on the plan. The RPF will send Native Americans written notification of a proposed THP that contains the following information:
   - A request for information concerning the potential existence of any Native American archaeological or cultural sites within the plan boundaries.
   - Information concerning the location of the plan including two maps. One of these maps must be a general location map that will show the travel route from the nearest community or well-known landmark to the plan area. The other map will be a copied segment of a USGS quad map that displays the approximate boundary of the plan area and includes a map legend and a scale. The letter will also contain a description of the plan location including the county, section, township, range, base and meridian, and the approximate direction and distance from the nearest community or well-known landmark and a statement that all replies, comments, questions, or other information submitted by Native Americans as a result of this notice should be directed to the RPF. The name, address, and phone number of the RPF will be provided.
   - Information concerning the available time for response will also be provided in the notice. The RPF will indicate that he or she is requesting a response within ten days from the date of the notice so the information can be incorporated into the plan when initially submitted to the Director (Native Americans actually have more than 10 days to respond - these timelines are discussed in greater detail on page 10 of this report). The RPF will provide an estimated date the plan will be submitted to CDF. Although it is possible the CDF could approve a plan 16 calendar days after it is submitted, typically, the plan is reviewed for at least 45 calendar days following plan submittal before it may be approved.
   - The RPF will indicate that Native American groups may participate in the plan review process by submitting written comments to CDF before closure of the public comment period. The RPF will also include a statement that locations of sites disclosed will be kept confidential.
   - Native Americans will be advised that a Confidential Archaeological Addendum (CAA)
will be prepared for the plan and a copy of pertinent information contained within it may, at the discretion of CDF, be obtained by requesting this report. Such requests should be directed to the appropriate CDF Archaeologist (a list of CDF Archaeologists and their phone numbers is included on pages 11-12 of this report).

The RPF is required to provide additional notification to Native Americans after the survey is completed if any Native American Archaeological or Cultural Site (see definition above) exists within the plan area. This second phase of consultation provides Native Americans with the opportunity to review the protection measures developed by the RPF and CDF during the preharvest inspection and afford Native Americans the opportunity to submit written comments for CDF’s consideration prior to CDF’s decision regarding plan approval.

(3) Prefield Research. The RPF must ensure that research is conducted prior to the field survey for cultural resources, including review of appropriate literature and contacting knowledgeable individuals, concerning potential archaeological or historical sites occurring on the property.

(4) Cultural Resource Survey. The RPF must provide a professional archaeologist or a person with archaeological training (in accordance with the rules) to conduct a field survey for archaeological and historical sites within the plan area. These surveys are usually conducted by the RPF and/or the RPF's supervised designees, if such personnel have satisfactorily completed training provided by CDF to identify and protect cultural resources. The survey is documented in a confidential report that contains a list and mapped location for all identified cultural resources, including those identified by Native Americans during initial consultation. The report also indicates how these cultural resources will be protected.

CDF's Native American Consultation Policy for THPs

CDF provides training and direction to RPFs and advises them on how to accomplish successful notification and consultation with Native Americans. Part of this training includes information provided by Native American instructors that help CDF teach the classes. The following information provides more information concerning the direction given to RPFs.

Consultation Procedures Statement. The Forest Practice Rules require the RPF to consult with the NAIC and listed local tribes for every THP. Resources of concern that require Native American consultation include prehistoric or ethnohistoric archaeological sites, traditional cultural properties, such as sacred places, and gathering localities. Consultation shall also take place in those sensitive instances, such as the discovery of Native American human remains and burial goods, as specified in State law (see Health and Safety Code Section 7050.5 and PRC Section 5097.98). CDF believes that consultation with Native American groups and individuals during project planning is appropriate and necessary because cultural resources of significance to Indian tribes deserve full consideration in the project planning and review process and tribes possess a special perspective on, and relation to these resources. Consultation with Native Americans means affording timely notice and opportunity to comment on a proposed THP. It is also an opportunity to request information on specific cultural resources that may be impacted by a proposed project. Receipt of their written or verbal comments, views, and concerns prior to project approval are the essence of consultation. RPFs are encouraged to correspond and provide maps of the location of
the proposed project. Direct contacts through telephone calls, email correspondence and face-to-face meetings facilitate the development of mutual trust and encourage the exchange of information. Critical to successful consultation is listening to, and actively considering the views expressed by Native American individuals and/or groups. A principal goal of consultation is to provide Native Americans a reasonable opportunity to express their views on a THP. Although face-to-face meetings are not required for every project, the value of personal contact should not be overlooked. Native Americans receiving notification about a proposed project may request a face-to-face meeting with the RPF to discuss the project and RPFs are encouraged to implement this request, if practical and timely. When RPFs discover that Native American people may have concerns about a proposed plan, the RPF is encouraged to investigate and consult. In those instances, telephone calls and face-to-face meetings should be completed to gather information, answer questions, listen to concerns, and give consideration to any recommendations provided by concerned/interested Native Americans. Typically, consultation for a proposed THP is completed in a series of steps. The first step, called Initial Consultation, is intended to provide notice of a proposed project and request information about cultural resources known or thought to exist within or adjacent to the project area. The second step, called Second Consultation, is taken when known cultural resources may be affected by the project.

Initial Consultation. To complete the Initial Consultation, the RPF shall send correspondence with maps to the NAHC and to all the appropriate local tribal contacts. These must include two map attachments: a vicinity map, and a detailed project map. A copy of the appropriate segment of the USGS 7.5’ quadrangle will suffice. To better facilitate communication, the correspondence should contain an introductory statement of purpose, a brief description of the proposed project, a request for information on archaeological or cultural sites that might exist in the project area, information on when the project is likely to begin, the name, address, and phone number of the RPF to contact, information on the time frame to submit written comments, and a statement that encourages participation in the project review process. The NAHC will check its Sacred Lands File and reply if sacred lands sites are identified.

Second Consultation. The second consultation step must be completed for every THP with Native American archaeological or cultural resources in an area that might be affected. If the project area is changed to exclude archaeological sites, and such sites will not be affected, or if archaeological sites are identified, but are historic representations (Euro-American-era resources) the second notice is not necessary. The second step provides clear notice that a proposed project could affect Native American archaeological or other cultural resources. It further provides the consulted Native American groups the opportunity to submit comments concerning site stewardship, protection, or management for the CDF to consider. To complete the second consultation, correspondence with attached project and impact specific maps shall be sent to the NAHC and to appropriate local tribal contacts on CDF’s list. Two maps are recommended attachments to the correspondence: a vicinity map and a detailed project/impact specific map. A copy of the appropriate segment of the USGS 7.5’ quad will usually suffice for the project map. The substance of the correspondence shall include notification that archaeological resources are present in the proposed project area, a brief project description, a brief description of the identified archaeological and/or cultural resources, the proposed protection measures, an invitation to submit written comments to the CDF for its consideration prior to project approval, name, address, and phone number of the appropriate CDF staff person to receive comments, the date or timeframe for
submitting comments. Sometimes the initial and second consultation may be completed in a single step. This is the case if the RPF knows that cultural resources are present and how they will be treated. Although it is not a requirement to complete this work in two steps, the usual procedure is to send the first notice prior to the completion of an archaeological survey, and then a second notice after all survey work has been finished and an initial plan for the treatment of cultural resource impacts has been developed, if such resources have been confirmed to exist within the plan.

Consultation Limitations. If the RPF receives requests from the NAHC and/or local tribes that appear to be outside the primary topic for consultation (potential impacts to cultural resources), the RPF is encouraged to contact a CDF Archaeologist for assistance.

Payment of Fees. RPFs occasionally receive requests from Native Americans for payment of fees for consultation. The following information contains CDF’s direction to RPFs on how they may respond to such requests. The RPF should recognize that in many instances, Native American people are being asked to volunteer their time to provide information. Accordingly, the RPF should consider steps to overcome financial impediments that prevent Indian tribes from effectively participating in the consultation process. These steps may include scheduling meetings in places and times that are convenient for the consulting parties. Consultation is intended to address the identification of sites, site significance evaluation, impacts assessment, and resolution of significant adverse change. Its purpose is to give Native Americans an opportunity to present their interests and concerns regarding the proposed THP, and this information must be included in the Confidential Archaeological Addendum so CDF can take it into account prior to making a decision regarding plan approval. This process enables CDF to carry-out its obligation to seek and consider the views of participating Native American groups and make a good faith effort to solicit the views of Native American individuals and groups and factor these views into the final decision. The consultation requirement, thus, gives an Indian tribe the ability to advocate an outcome it would like to see CDF take in the final project decision.

When state agencies seek the views of an Indian tribe to fulfill the agency’s legal obligation to consult, the agency is not required to pay the tribe for providing its views, nor is the RPF that is attempting to consult to carry out consultation efforts. The tribe is acting as a responsible agency or an agency with special expertise under CEQA. CEQA does not give agencies acting in these roles authority to charge fees for their response to consultation. If the agency has made a reasonable and good faith effort to consult with an Indian tribe and the tribe refuses to respond without receiving payment, the agency has met its obligation to consult, and is free to proceed with the project review and approval process.

Under some circumstances, however, CDF may choose to contract with a Native American group or individual for paid consulting services to help CDF develop information. Those situations may include when CDF specifically requests a Native American group or individual to conduct a field survey within the CDF project to address a specific issue requiring their expertise, or during an archaeological excavation when it is has been determined by a CDF Archaeologist that a Native American monitor is needed. In those instances, the agency or applicant might be formally purchasing the services of the tribe.
Ultimately, a state agency must be able to demonstrate that it made a reasonable and good faith effort. CEQA and the Forest Practice Rules encourage consultation with Indian tribes and their active participation in the planning process. These laws and regulations, however, do not require CDF or project applicants to pay for consultation. If an agency or applicant attempts to consult with an Indian tribe and the tribe demands payment as a condition of consulting, then the agency or applicant may refuse payment and move to the next step in the review process. In such situations, however, the agency should still document the efforts made to consult with Native Americans. If, on the other hand, the agency or applicant seeks information or documentation that it would normally obtain from a professional contractor or consultant, then they should expect to pay for the work product.

What Native Americans Can Do When THP Notification is Received

After receiving a notification letter from the RPF you should determine whether or not the proposed THP is inside or outside your ancestral territory or area of concern or expertise. Contact the RPF who sent you the notification if you need clarification on the location of the proposed project or any other information contained in the notice. If the proposed THP is within your ancestral territory or area of concern or expertise, an archival search should be conducted through the tribe’s archive, or by contacting tribal elders and members for comments. Archival search and consultation provides you with the ability to place the proposed THP within one of three categories that entail particular courses of action:

1. No known known sites and no specific concerns. No further review is required. You may send a form letter to the RPF notifying the RPF that the Tribe has no knowledge of a cultural site on this particular project and has no concerns with the proposed THP, or so notify the RPF over the telephone, or simply not respond.

2. No known sites identified but the information gathered suggests the likelihood for the existence of a site. In these cases, if you have concerns you may wish to contact the RPF to discuss your findings or ask for additional time to conduct more research.

3. Known sites. If you know of confirmed or suspected cultural sites within the proposed THP area, notify the RPF about this as soon as possible so this information can be utilized during project planning. Disclose where the site is located, what it is, how large an area it covers, and offer suggestions on how it could be protected. It is preferable for this response to be in writing and accompanied by a map, but you may also provide this notification to the RPF through a telephone call. It is important that you provide the RPF with this information as soon as possible so the site is identified in the plan and afforded appropriate protection.

If you desire to participate in an on-site inspection to show the RPF the precise location of the cultural site or to evaluate its protection, contact the Registered Professional Forester and request to meet with the RPF during the plan preparation or to participate in the Preharvest Inspection (PHI). If the RPF is unable to accommodate your request to visit the project area, you may contact a CDF Staff Archaeologist to request to attend the PHI. Site visits by Native Americans are often only permitted with landowner consent, and in many cases CDF does not have the authority to force...
the landowner to allow such a site visit to take place. There may be some circumstances where CDF does have sufficient authority to override the landowner, if the landowner wants the proposed project to continue to CDF for approval. Under these circumstances, CDF would need to conclude that a certain Native American group or individual has specific information that must be conveyed not only in writing, but in the field as well. In such cases, the Native American is acting as CDF’s expert and may participate on the PHI under the Department’s authority to inspect the THP to assist CDF identify the location and aerial extent of cultural sites that may exist on the plan. The specific authority enabling CDF to bring a Native American expert out on a field inspection of a THP, when CDF determines this step is necessary, is found in Section 1037.5(a) of the Forest Practice Rules.

The Timber Harvesting Plan (THP)

The Timber Harvesting Plan (THP) serves three functions. It provides information concerning a proposed THP to enable CDF to make a determination concerning whether or not the plan conforms to the rules. It provides information on a proposed project to those neighbors and interested members of the public and affords them an opportunity to comment on the proposed project, and it provides information and direction to timber operators (loggers) so that they can follow the operational aspects of the approved THP. The RPF does an extensive amount of work in order to prepare a THP. Initially the THP area is reviewed on maps and aerial photographs, and nearby projects are reviewed to assess the potential cumulative impact of the proposed timber operations. The RPF may spend days or weeks assessing potential impacts to timber, water, soil, wildlife, cultural resources, and other forest resources, and develops a plan to wisely manage these resource values. This assessment will include extensive fieldwork for surveys and inventories, research, and report preparation during the development of a proposed THP. The RPF then writes the THP and submits it to CDF for review. The RPF is working for the THP Submitter who is either the timberland owner or the timber owner, or the timber operator - sometimes these are three different people or companies. THP preparation includes the preparation of a Confidential Archaeological Addendum (CAA). The CAA contains all information on the cultural resource investigation conducted for the project, including the results of the Native American notification process, the archaeological survey, what sites were found, and how these sites are to be protected. The preparation of a THP may take from one month to several years to complete. A Notice of Intent is required to be posted in a conspicuous location on the public road nearest the THP site. This Notice includes items such as the names of the timberland owner, the RPF, the THP Submitter, the number of acres to be harvested, and the address for the CDF Regional Office available for public input. A map is also posted with the location of the project shown.

How THPs Are Reviewed

When CDF receives the THP, the Department has ten days to file it or return it. A plan is filed when it is found by CDF to be complete and in proper order. CDF will send a notice of filing of the THP to any person who requests, in writing, to be notified. After the plan is filed, written comments and concerns from the public can still be provided to CDF and these must be considered during CDF’s review of the THP. A CDF Staff Archaeologist reviews every Confidential Archaeological Addendum (CAA) for every THP submitted to CDF. The CDF Archaeologist reviews the CAA to determine if all of the cultural resource investigation procedures
have been satisfactorily completed, evaluates the professional adequacy of the survey effort and survey documentation, and evaluates the adequacy of proposed protection measures for identified cultural resource sites. The CDF Archaeologist may participate on the PHI, along with the RPF and the CDF Forest Practice Inspector, to evaluate the archaeological survey effort, conduct an on-the-ground search for additional sites, or evaluate site significance and protection measures.

It is unlikely that CDF and their staff archaeologists will be able to locate non-archaeological cultural sites without the involvement and assistance from local tribes. Traditional cultural properties, gathering areas, prayer sites, and other specific locations of cultural importance to Native Americans, especially those that lack surface artifacts or features, are examples of cultural resources that are usually not identified during archaeological surveys. Many of these are known only to local Native American groups. By responding to the written notification, local Native Americans can notify the RPF and CDF that a cultural site exists in the area proposed for timber operations and ensure the site is afforded protection. Most often archaeological sites are completely protected from harvesting operations, and special protection measures are sometimes also included within the 100-foot zone surrounding the site. During the THP review period the NAHC will check the plan area against their Sacred Land Files to see if any previously recorded cultural sites exist in the THP area. If there appears to be any archaeological or culturally sensitive areas within the proposed harvest area as a result of the review by the NAHC, the RPF is promptly notified so this information can be investigated and addressed in the plan.

Public comments may be directed toward archaeological issues or other issues, which may include water quality, scenic quality, traffic, or biological habitat protection measures. Written comments may be made to both the RPF and CDF. Information on the location of archaeological or other cultural sites is kept by CDF in a separate confidential file that is not available to the general public.

**Time Frame**

The rules require the RPF to wait at least ten days for possible response to their request for information in the written notification to local Native Americans. Native Americans actually have much more time than the minimum 10-day period for response to the notice that is mentioned by the RPF in the initial notification of a proposed THP. The RPF asks for a response in ten days so concerns may be addressed before CDF receives the THP. The RPF must send their request to the Native Americans at least ten days before delivering the THP to CDF. Once CDF receives the THP they have up to ten days to file or return it. After the THP is filed there is a minimum of fifteen (15) days from receipt of the Plan by the CDF before approval. This will give the public time for written comments. If a PHI is done, the 15-day period for public review begins at the date of the PHI, not the date of filing, giving the public more time for review. After the initial review and public comment have ended, the Director has up to ten working days to review the public input, to consider recommendations and mitigation measures of the agencies, and determine if the plan is in conformance with the applicable rules. Therefore, a minimum of twenty-five (25) days is available to respond to a THP after it has been filed, and quite often the time frame is longer than thirty-five (35) days.

Even if Native Americans provide notification of the existence of a cultural site after CDF has approved the THP, CDF will attempt to respond to the information and may have authority to
insert protection measures into the THP. CDF's authority to address late-arriving information and make additional inspections upon the property is limited to the life of the THP (usually 3-5 years) although CDF's authority may extend for some time after the filing of a THP completion report to inspect and confirm the success of restocking efforts designed to maintain forest productivity.

**Approving the THP**

All written comments must be considered and responded to before THP approval. THP approval means that the written THP, as documented in possible revisions required by CDF, is found to be in conformance with the applicable rules. If you become aware of a site location, even after a THP is approved, contact CDF. The CDF Archaeologist and the CDF Forest Practice Inspector will attempt to confirm its location on the ground, evaluate the potential for significant impacts associated with logging operations, and ensure that appropriate protection measures are amended into the THP. If during timber harvesting an archaeological or historical site is discovered, by rule, all timber operations must stop in the immediate area surrounding the discovered site, and CDF must be immediately notified. The newly discovered site will be addressed in a THP amendment, and CDF will immediately send that proposed amendment to Native Americans. The CDF Archaeologist, or the CDF inspector under the Archaeologist’s direction, will evaluate the site and protection measures may be amended into the THP. The CDF Archaeologist, along with other CDF Inspectors, may inspect the THP area before, during and after harvesting operations to insure protection of sites.

**Additional Information**

To obtain more information on CDF’s Archaeology Program or the Forest Practice Rules for the protection of cultural resources, visit the CDF Archaeology Program Web Site at the following address: [http://www.indiana.edu/~e472/cdf/](http://www.indiana.edu/~e472/cdf/) These web pages contain a complete set of the current forest practice rules for the protection of archaeological and historical sites, CDF’s Native American Contact List, CDF procedures, Management Plans, Survey Report Forms, Site Recording Forms, news stories, program information, and many other items.

**Names, Phone Numbers, and Addresses of Key Contacts**

**CDF Staff Archaeologists**

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Sonia Tamez, Tribal Relations Project Leader
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CALIFORNIA DEPARTMENT OF PARKS AND RECREATION (DPR)

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(updated September 2005)

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Southern Service Center: Michael P. Sampson, Associate State Archaeologist
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CULTURAL RESOURCES MANAGEMENT IN CALIFORNIA STATE PARKS

California State Parks is the steward of many of California's most significant cultural treasures. Whether preserving historic structures, archival documents, shipwrecks, gold rush towns, ancient villages or museum collections, the job of managing heritage resources can be described in three steps.

The first step is to compile a comprehensive inventory and thoroughly document the resources. Curators, historians and archaeologists research our parks, often working in teams to locate and describe the physical remains of past human activity. They may find archaeological deposits, ruins, abandoned mines or standing features. The same area often produces evidence from different time periods. Park specialists record, describe and map existing heritage resources, providing a baseline for future comparisons.

Evaluating the resources and determining their condition is the second step in cultural resource management. Museum curators study objects to assess their significant and relationship to historic events, places and persons, while historians and archaeologists use criteria developed for the National Register of Historic Places to evaluate historic structures, archaeological sites and cultural landscapes. Then staff identify outstanding characteristics, assess threats and prepare reports. Historic structure reports define the original historic fabric of structures and recommend how best to preserve them. Artifact condition reports document the status of individual objects.

Finally, active stewardship ensures that resources are preserved, protected and made available for public understanding and appreciation. Cultural resource specialists take proactive measures, such as removal of graffiti from an ancient rock art site or stabilization of historic features, to rescue the heritage resources of our state parks from decline and decay, and to ensure that these resources are available for future generations.

In its new acquisitions as well as its management, California State Parks is committed to preserving the diversity and antiquity of human experience in California. Understanding this rich historical legacy gives our citizens a sense of place and continuity in the modern world.
The Department of Parks and Recreation and the California Indian Heritage Center Task Force are working to make the California Indian Heritage Center a reality.

The California Indian Heritage Center will fill a long-standing need in the state, serving the needs of both Native and non-Native citizens. It will replace the current State Indian Museum in Sacramento with a center where Indian people can come together, celebrate and preserve their past, and promote the continuation of their traditions. It will also be a place where California students, teachers, and families can learn about the history and heritage of California’s indigenous people and contemporary Indian life. It will be a destination for tourists from around the world to learn about Native American culture in California.

Preliminary concepts for the facility include formal exhibit galleries for historic and contemporary exhibitions, a theater, outdoor village reconstructions, native plant gardens, and ceremonial areas. The total size of modern buildings is estimated at approximately 60,000 square feet. In addition to gallery and programming spaces, one or more structures will contain curation facilities, a research center, meeting rooms, office and support areas, a shop, and possibly facilities for food service. The grounds will include areas for special events and traditional gatherings. Construction may take place in phases, but the vision for the completed center is for it to serve as the hub of cultural activities throughout the state by networking existing and emerging local, State, and tribal museums through electronic media, training programs, and shared exhibitions, and to attract hundreds of thousands of visitors of all kinds.

The California Indian Heritage Center will be developed and operated as part of California’s State Park System, in collaboration with and under the guidance of the California Indian community. An initial $5 million in voter-approved parks bond monies allocated for the project will provide funding for the preliminary phase, which will include a master plan and some site development. The legislatively-authorized Task Force has two primary statutory purposes: to recommend to State Parks a site for the project, and to recommend the governance structure for the center.

The site selection recommendation has occurred, and was ratified in July 2005. A location along the lower American River east of Discovery Park has been proposed. Work on governance issues and how the center will be operated is underway now and should be complete in early 2006. Site master planning will commence in January 2006, and will take approximately one year.
California Indian Heritage Center
1416 9th Street, Room 902
Sacramento, CA 95814
Phone: (916) 653-2030
Fax: (916) 653-3398
E-mail: cihc@parks.ca.gov

**California Indian Heritage Center Task Force:**

**Public Members Appointed by the Director of California State Parks**

**Gen Denton (Miwok)**
Gen Denton is a member of the Ione Band of Miwok Indians, and an active member of the Sierra Native American Council. After raising her children while traveling as a United States Navy family, she has devoted much of her time to the continuation and interpretation of Miwok traditions and spiritual values. As a member of the Citizens Advisory Group at Chaw’s (Indian Grinding Rock State Park), Ms. Denton has worked with State Park staff to ensure that the Cultural Center located within the park serves the local Indian community and educates park visitors about Indian culture and history. She worked on the development of the museum exhibit "Discovery, Devastation and Survival: California Indians and the Gold Rush".

**Cindi Alvitre (Tongva)**
Cindi Alvitre helped found the Ti’at Society in the 1980’s. She is currently pursuing her Ph.D. at the University of California, Los Angeles in the Department of World Arts and Cultures. She has been a cultural/environmental educator and activist for nearly three decades and holds a Bachelor of Arts in Anthropology and a Master of Arts in History/Museology. She was the first woman chair of the Gabrieleno-Tongva Tribal Council. Ms. Alvitre has represented her community domestically and internationally in a number of different venues including opening for Nobel Laureates Rigoberta Menchu Tum, and His Holiness the Dalai Lama. She continues to dedicate her life to the preservation and protection of indigenous cultures.

**Jack Norton (Hupa/Cherokee)**
Jack Norton is an enrolled member of the Yurok Nation. He is of Hupa/Cherokee heritage and participates as a traditional singer and dancer in the religious ceremonies held by the northwestern California Native peoples. His book *Genocide in Northwestern California* (1979) was recently republished by the Indian Historian Press. He has written numerous articles on Native California life ways and lectured throughout the western United States and in Germany. He was appointed to the Rupert Costo Chair in American Indian History at the University of California, Riverside (1997-1998) and retired from Humboldt State University where he taught Native American Studies for 25 years.

**Public Members Appointed by the NAHC Executive Secretary**

**Bill Mungary (Paiute / Apache)**
Bill Mungary has served as Chairperson of the Native American Heritage Commission since
He has had a long career working in housing, community and economic development, retiring recently as Director of the Community Development Department for Kern County. He has served on numerous boards and councils, including the California Rural Development Council as the representative for tribal governments. Mr. Mungary was a captain in the United States Air Force, and holds a B.A. in International Relations and a M.S. in Business Administration from University of California at Los Angeles.

Timothy Bactad (Kumeyaay)
Timothy Bactad’s professional career has led down many roads, all with the common interest of helping people. He has been a HIV counselor for the San Diego American Indian Health Center and was the director of the SSI program for the Southern Indian Health Clinic in Alpine, California. Currently, Mr. Bactad is a Councilman for the Viejas Band of Kumeyaay Indians. He previously served the Viejas tribe as a lobbyist on their Housing Commission and Enrollment Committee. Mr. Bactad has extensive experience in meeting with Local, State, and Federal government and informing them on the needs of the Viejas Reservation and the needs of all Kumeyaay.

Margaret Dalton (Miwuk)
Margaret L. Dalton has been designated by Larry Myers, Executive Secretary, Native American Heritage, to serve in his place when possible. Mrs. Dalton and her husband settled on the Jackson Rancheria in the Sierra foothills in 1956. After raising eight children in her extended family, she devoted herself to establishing a tribal government for the Jackson Rancheria Band of Miwuk Indians. She was elected Tribal Chairperson in 1979 and has served in this capacity ever since. From the beginning, her goal was to make her tribe financially self-sufficient and not dependent on any state or government funding.

State Officials That Are Members by Law (ex-officio members)

Mike Chrisman, Secretary, Resources Agency
Governor Arnold Schwarzenegger appointed Mike Chrisman California’s ninth Secretary for Resources on November 21, 2003. As a member of Governor Schwarzenegger's Cabinet, Secretary Chrisman serves as his chief advisor on issues related to the State's natural, historical, and cultural resources. As the State of California's Secretary for the Resources Agency, Mike Chrisman oversees policies, activities, and a budget of $4.1 billion and 14,712 employees in 24 departments, commissions, boards and conservancies on conservation, water, fish and game, forestry, parks, energy, coastal, marine and landscape. Governor Schwarzenegger appointed Secretary Chrisman to his Administration for his extensive expertise in environmental resource management and environmental issues.

Ruth Coleman, Director, California State Parks
As Director, Ruth Coleman is responsible for 277 parks in the State Park System, which includes five Regional Indian Museums, historic and pre-historic California Indian sites, cultural landscapes, and a large collection of Native American cultural objects. Ms. Coleman joined the department as Deputy Director for Legislation in December 1999. According to SB 2063, the Director of State Parks (or her designee) will serve as the Executive Secretary to the Task Force.
Larry Myers (Pomo), Executive Secretary, Native American Heritage Commission
Larry Myers has been Executive Secretary of the Native American Heritage Commission (NAHC) since 1987. The NAHC advocates for and provides oversight for the protection of Native American burials and cemeteries, and the preservation of sacred shrines, ceremonial sites, and places of worship in California. Mr. Myers was instrumental in the creation and installation of the Commemorative Seal on the front steps of the State Capitol that memorializes contributions of California Indians.

Susan Hildreth, State Librarian
Governor Schwarzenegger appointed Susan Hildreth the California State Librarian in July 2004. Previously, she served as the San Francisco City Librarian and in various positions with public libraries in northern California. Ms. Hildreth is a past-President of the California Library Association and is active in the American Library Association. Among the State Library’s duties are preserving California’s cultural heritage and providing access to related resources. The State Librarian chairs the California Cultural and Historical Endowment, and she or her designee serves as a member of the California Indian Heritage Center Task Force.

Designees of State Officials
Designees may serve in place of ex-officio members on a regular or occasional basis.

Walter Gray
Walter Gray has been designated by Ruth Coleman, Director, California State Parks, to serve as her representative on the Task Force. Mr. Gray is the Chief of the Cultural Resources Division of California State Parks, and recently returned to the department after serving for six years as the California State Archivist and Chief of the Archives & Museum Division in the office of the Secretary of State. In his earlier career with State Parks, he served for 21 years as archivist, curator and director of the California State Railroad Museum. Mr. Gray also serves as the representative of Secretary for Resources Mike Chrisman on the California Cultural and Historical Endowment.
Caltrans Division of Environmental Analysis helps coordinate access by Native American tribes and other political entities to the project development process. Culturally significant sites are treated with special consideration by Caltrans staff during planning, engineering and construction. Tina Biorn works with various district Native American Heritage Coordinators to ensure the wishes of Native American groups are considered during this process. Tina can be reached at 916-653-0013.

**Caltrans District Native American Coordinators**

*(updated March 2005)*

<table>
<thead>
<tr>
<th>District - location</th>
<th>DNAC</th>
<th>PUBLIC #</th>
<th>FAX</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - Eureka-Branch 1</td>
<td>Barry Douglas</td>
<td>(707) 445-6417</td>
<td>(707) 445-5775</td>
</tr>
<tr>
<td>1 - Eureka-Branch 2</td>
<td>Sara Atchley</td>
<td>(707) 441-3983</td>
<td>(707) 445-5775</td>
</tr>
<tr>
<td>2 - Redding</td>
<td>Wayne Wiant</td>
<td>(530) 225-3405</td>
<td>(530) 225-3019</td>
</tr>
<tr>
<td>3 - Marysville/Sacramento</td>
<td>Richard Olson¹</td>
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<td>(916) 274-0602</td>
</tr>
<tr>
<td>4 - Oakland -East Branch</td>
<td>Jennifer Darcangelo</td>
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<td>(510) 286-5600</td>
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<tr>
<td>4 - Oakland-West Branch</td>
<td>Lissa McKee</td>
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<tr>
<td>5 - San Luis Obispo</td>
<td>Terry Joslin</td>
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</tr>
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<td>6 - Fresno</td>
<td>Karen Nissen</td>
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<td>(559) 243-8215</td>
</tr>
<tr>
<td>6 - Fresno</td>
<td>Lisa Nishimura (alt)</td>
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<td>(559) 243-8215</td>
</tr>
<tr>
<td>7 - Los Angeles</td>
<td>Gary Iverson</td>
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</tr>
<tr>
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<td>(213) 897-0685</td>
</tr>
<tr>
<td>8 - San Bernardino</td>
<td>Karen Swope</td>
<td>(909) 383-4042</td>
<td>(909) 383-6494</td>
</tr>
</tbody>
</table>

¹office in Sacramento
The public is concerned about how cultural resources are affected by Caltrans projects. Responsible consideration of cultural values in the course of project planning and implementation helps avoid conflict and build support for Caltrans transportation objectives. This concern is manifested by a suite of laws and regulations that relate to archaeological, historical and social-cultural resources and issues.

Caltrans complies with federal laws for transportation projects with federal funding. This process is commonly known as "Section 106" (of the National Historic Preservation Act of 1966). Significant non-archaeological resources are also subject to Section 4(f) of the Department of Transportation Act of 1966.

Caltrans must also comply with the California Environmental Quality Act (CEQA).

The concerns of Native Americans are also addressed by a variety of specialized federal and state laws and regulations.

The surviving traces of the historic and prehistoric past are non-renewable resources, easily degraded or destroyed by highway projects unless an appropriate effort is made to identify, evaluate, and protect them. Documenting the often-ephemeral traces of our collective history adds to the understanding and appreciation of California's past by future generations.
Role of the District Heritage Resources Coordinator:

Each of the twelve Caltrans District Offices has a Heritage Resources Coordinator (HRC). Each HRC serves as the designated source of information on the subject of cultural resources. HRCs are charged with the following responsibilities:

- Track the progress of projects through the Section 106 compliance process;
- Schedule cultural resource studies;
- Process federal or state cultural resource compliance documents;
- Prepare cultural resource documents;
- Handle correspondence on cultural resource matters between the District, Headquarters and FHWA.

List of the District Heritage Resources Coordinators

<table>
<thead>
<tr>
<th>DISTRICT UNIT</th>
<th>NAME</th>
<th>PHONE#</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 E-1</td>
<td>Keefe, Tim</td>
<td>707-441-2022</td>
</tr>
<tr>
<td>2 R-1</td>
<td>Hamusek, Blossom</td>
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<tr>
<td>3 S3</td>
<td>St. John, Gail</td>
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<tr>
<td>4 Cultural Resource Studies</td>
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<tr>
<td>5 Specialist Brnc</td>
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<tr>
<td>6 Unit 17701</td>
<td>Binning, Jeanne</td>
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<tr>
<td>6 Unit 177</td>
<td>Faraone, Lynn</td>
<td>559-243-8223</td>
</tr>
<tr>
<td>7 Planning/OEP</td>
<td>Iverson, Gary</td>
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</tr>
<tr>
<td>8 Env/CulturaiStBr</td>
<td>Swope, Karen</td>
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</tr>
<tr>
<td>9 Unit 178</td>
<td>Mills, Tom</td>
<td>760-872-2424</td>
</tr>
<tr>
<td>10 Unit 170</td>
<td>Levy, Richard</td>
<td>209-948-3911</td>
</tr>
<tr>
<td>11 Specialist Studies</td>
<td>Rosen, Marty</td>
<td>858-616-6615</td>
</tr>
<tr>
<td>12 EnvPlanBrchC</td>
<td>Sinopoli, Cheryl</td>
<td>949-724-2855</td>
</tr>
</tbody>
</table>
Caltrans' Government-to-Government Relations

The Department of Transportation recognizes the unique sovereign status of Federally recognized Tribes and the cultural values of all Native American communities in California, and it is committed to strengthening the Government-to-Government relationship with the Tribes.

There are currently 109 Federally recognized Tribal Governments in California. These Tribal Governments hold inherent powers of limited sovereignty and are charged with the same responsibilities as any other governmental authority: Planning the use of their resources to meet their social, economic cultural and political needs.

California is home to the largest Native American population in the country, including Federally recognized Tribes, terminated, or non-federally recognized Tribes, and urban Indian communities.

The web site is designed to provide information from the Department of Transportation, as well as links to other Native American web sites.

For further information contact us at:

| California Department of Transportation |
| Division of Transportation Planning |
| Office of Regional and Interagency Planning |
| 1120 N Street, MS 32 |
| Sacramento, CA 95814 |
| Fax: (916) 653-0001 |

<table>
<thead>
<tr>
<th>Phone or E-mail us at:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cynthia Gomez (916) 654-2389</td>
</tr>
<tr>
<td>Jila Priebe (916) 651-8195</td>
</tr>
<tr>
<td>Valarie Smith (student assistant) (916) 653-3175</td>
</tr>
</tbody>
</table>
Native American Coordinators

The District Native American Coordinator (DNAC) is the designated source of information regarding the involvement of Native Americans in the District’s cultural resources studies. The DNAC ensures that consultation with Native Americans regarding cultural resources occurs early in a project’s planning stage, and continuously throughout the life of a project, and ensures that documentation of contacts and consultation for cultural resources is included in compliance and environmental documents. Under the general direction of the District Environmental Branch Chief (DEBC), the DNAC acts as liaison between the DEB and Native American tribes, groups and individuals, provides specialized technical assistance on Native American consultation to the District’s staff, consultants, and contractors, and coordinates with Transportation Planning and Civil Rights Native American Liaisons on issues of mutual concern.

The DNAC either performs themselves, or provides assistance and advice to other staff in conducting, the following activities:

- Consulting with Federally recognized Indian tribes and unrecognized Indian groups and individuals on a project-by-project basis for all phases of cultural resources studies.
- Consulting with Native Americans who are likely to have knowledge of, or concerns with, cultural resources, such as gathering places, within Caltrans right-of-way.
- Facilitating meetings and discussions between Caltrans staff and Native American representatives.
- Develops agreements with Native American representatives.
- Coordination with other Caltrans programs including Maintenance, Right-of-Way and Design to address areas of Native American concerns.
- Maintenance of files of all correspondence and documentation of coordination and consultation for projects.
- Provides a summary, when necessary, of consultation for inclusion in cultural resource reports and environmental documents.
- Provides and maintains guidance on District Native American issues, including but not limited to:
  (1) Maintaining a library on laws, regulations, guidance, and other such information pertinent to consultation with Native Americans and ensuring that the library is accessible to District staff.
  (2) Disseminating policy, procedures, and information on Native American issues to district cultural resources staff and Division Environmental Branch Chiefs.

List of the Native American Coordinators

<table>
<thead>
<tr>
<th>DIST. Location</th>
<th>NAME</th>
<th>Role</th>
<th>Phone</th>
<th>E-mail</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Tina Biom</td>
<td>State-Wide NAC</td>
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<td><a href="mailto:Tina_Biom@dot.ca.gov">Tina_Biom@dot.ca.gov</a></td>
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<td>707-441-5815</td>
<td><a href="mailto:Kathleen_Sartorius@dot.ca.gov">Kathleen_Sartorius@dot.ca.gov</a></td>
</tr>
<tr>
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<tr>
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</tr>
</tbody>
</table>
The Native American Advisory Committee was established in 1997 to improve the government-to-government relationship between the Indian Tribes of California and the California Department of Transportation (Department). The Committee provides advice to the Director of the Department regarding matters of interest or concern to the Tribes and their constituents.

Native American Advisory Committee Members (MEMBERSHIP TERM - 2004-2005)

**Northern Region**
Joel Bravo - Smith River Rancheria
Bruce Klein - Bishop Paiute Tribe
Garth Sundberg - Trinidad Rancheria
Ronda Mottlow - Big Valley Rancheria
Richard Myers - Yurok Tribe

**Central Region**
Samuel Elizondo - Picayune Rancheria of the Chukchansi Indians
Dave Nenna - Tule River Tribal Council
Pat Beihm - North Fork Rancheria of Mono Indians of California

**Southern Region**
Joseph Garcia, Sr. - Fort Mojave Indian Tribe
Joe Loya - Torres-Martinez Reservation
Chairman Deron Marquez - San Manuel Band of Mission Indians
Ben Scerato - Pala Band of Mission Indians

**Organizations**
Joseph A. Myers - National Indian Justice Center
Lorenda Sanchez - California Indian Manpower Consortium, Inc.
Kathy Wallace - California Indian Basketweavers Association
CHARTER:

CALTRANS NATIVE AMERICAN ADVISORY COMMITTEE

1. PURPOSE: The committee is established to improve the government-to-government relationships between the Indian Tribes of California (Tribes), and the California Department of Transportation (Caltrans). The committee provides advice to the Director of Caltrans (Director) about matters of interest or concern to the Tribes and their constituents. The Director recognizes and respects the sovereign status of the Tribes. The committee has the power to recommend policies or procedures for Caltrans, but not to incur debt payable by Caltrans, nor to represent Caltrans before any other entity. By no means will the meetings with Tribes through this committee constitute a “consultation” with Tribes.

2. QUALIFICATION, NOMINATION AND APPOINTMENT: For the purposes of this committee, the terms “Tribe” and “Tribes” shall refer exclusively to the federally-recognized Indian tribes located entirely or partially within the State of California. Each member of the committee is appointed by the Director of Caltrans upon nomination either by a Tribe, or by an Indian organization in California. No single Tribe or Indian organization may nominate more than one member. Nominations will be solicited by Caltrans annually or upon determination that a need to solicit exists. Considering the recommendations of the committee, the Director of Caltrans shall have the exclusive authority to appoint members to the committee. If any member of the committee is unable to serve for any reason, the Director in consideration of recommendations from the committee shall have the exclusive authority to determine the appropriate process to select and appoint his or her successor.

3. REPRESENTATION: Notwithstanding his or her Tribal affiliation, each member who is appointed by the Director upon nomination by a Tribe is considered an “at large” advocate, to the best of his or her ability, for the interests of all the Tribes in the geographic area of the State of California (south, central, north) in which his or her Tribe is located. Each member who is appointed by the Director upon nomination by an Indian organization is considered an advocate for Indians of California. The committee shall elect, by majority vote of those present, a Chair, Vice Chair, and/or Secretary. The Chair, Vice Chair and/or Secretary will serve a term that coincides with their membership on the committee.

4. CALTRANS REPRESENTATION: The Caltrans Deputy Director, Planning is the Director’s representative to the committee. The Deputy Director serves ex-officio as a member of the committee and shall not vote on any matter whatsoever.

5. NUMBER OF MEMBERSHIPS: The total number of memberships on the committee shall at a minimum, consist of twelve voting memberships, and at maximum it shall consist of no more than eighteen voting memberships. At all times, twelve voting memberships shall be members appointed upon the nomination of Tribes, and one nonvoting member shall be the Deputy Director, Planning. No more than one-third of the membership shall be Indian organizations.

6. TERM OF MEMBERSHIP: Each voting member shall be appointed to a two-year term. Members appointed to fill a vacancy occurring mid-term, shall be appointed for the period of
time remaining in that term of membership. By mutual agreement of the Director, Indian organization, and the Tribe nominating the member, a member may be reappointed for any number of terms of membership. A member may send an alternate to serve in their place. Any member who misses two consecutive meetings, and has not sent an alternate shall automatically be deemed unable to serve, and their membership shall be declared vacant. Alternates have all the voting rights and privileges of the member they represent. Alternates do not automatically fill vacant memberships.

7. "SUNSET" PROVISIONS: The Director shall, on or about the first day of January of each year evaluate whether this Native American Advisory Committee will continue to exist. The committee shall automatically continue in existence unless the Director determines otherwise.

8. FREQUENCY AND LOCATION OF MEETINGS: A minimum of three meetings shall be called and held each calendar year. Meetings shall be held in Sacramento, California or at such other locations as may from time to time be convenient and necessary. Any Tribe may sponsor a meeting of the committee at its reservation, under mutually agreeable terms.

9. ADMINISTRATIVE AND LOGISTICAL SUPPORT FOR THE COMMITTEE: Caltrans shall provide reasonable staff support for the activities of the committee. Caltrans shall make arrangements for all meetings, shall provide administrative support, and shall record and maintain minutes of each meeting. While Caltrans will attempt to accommodate each member’s needs, Caltrans shall not be responsible for any costs to members, except as may be agreed in advance in writing. In all cases the provisions of the State Administrative Manual, and federal regulations as appropriate, shall govern the conduct of business affairs.

10. CONDUCT OF MEETINGS: Meetings shall be conducted in a decorous, parliamentary and collegial manner. No specific rules of order are prescribed. Summary minutes of each meeting shall be taken. All decisions of the committee shall be made on the basis of consent of the voting members present, except that any member may request a vote to be taken on any specific matter. When a vote is taken, a voting member must make a formal motion defining the committee’s proposed action on the matter, the motion must be seconded by a voting member, the number of “ayes” and “nays” must be counted, and the vote of a simple majority of the members present shall govern. In case of a tie vote, the motion shall be deemed to have failed of passage. All formal motions, seconds, and votes must be recorded in writing in the minutes of the meeting.

11. OPEN MEETING LAW: Inasmuch as the committee is entirely advisory in nature, and has no governmental powers in and of itself, the proceedings of the committee are not subject to state or federal open meeting laws. However, the Director urges the committee to conduct its business in an open manner, whereby any interested person is permitted to observe any meeting of the committee. The committee may, upon formal motion and approval by a majority of the voting members present, close the meeting to public observation for stated and reasonable cause. The committee shall decide the terms and conditions under which it will receive testimony before it. The committee shall not issue any form whatsoever of public information or news releases; however, the committee may request Caltrans to issue such releases on its behalf and Caltrans shall not unreasonably refuse to do so.
12. INCOMPATIBLE ACTIVITIES: Inasmuch as the committee is entirely advisory in nature, and has no governmental nor fiduciary powers in and of itself, the proceedings of the committee are not subject to state or federal laws governing incompatible activities. The Director requests each member to refrain from any activity that could reasonably be construed as, or give the appearance of, an incompatible activity or a conflict of interest. Members shall not seek any personal preference in any business matter involving Caltrans, by virtue of their membership on this committee. However membership shall not bar any member from otherwise conducting business with Caltrans.

13. MODIFICATIONS OF CHARTER: The Director shall have the right to change this Charter. However, the committee may at any time request the Director to change this charter. Notwithstanding his right in this regard, the Director shall not unreasonably refuse such request. By the same token, in the event the Director considers necessary any change not requested by the committee, he shall seek the committee's consent to the change.

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2800 Cottage Way, Suite W-1834
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Phone: (916) 978-4400
Contact(s): Mike Pool, State Director
            Ken Wilson, State Archaeologist
            & Tribal Liaison

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            Cheryl Foster-Curly, SCEP Archaeologist

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            Nick Angeloff, SCEP Archaeologist

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            Kim Cuevas, Archaeologist

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            Vacant, Archaeologist

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Bishop, CA 93514
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Contact(s): Bill Dunkelberger, Field Office Manager
            Kirk Halford, Archaeologist

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            Joan Oxendine, District Archaeologist

Eagle Lake Field Office
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Susanville, CA 96130
(530) 257-0456
Contact(s): Dayne Barron, Field Office Manager
            Don Manual, Archaeologist
<table>
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<tr>
<th>Field Office</th>
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<tr>
<td>El Centro Field Office</td>
<td>Vicki Wood, Field Office Manager</td>
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<td>Vacant, Archaeologist</td>
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<tr>
<td>Folsom Field Office</td>
<td>Deane Swickard, Field Office Manager</td>
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<td></td>
<td>Dean Decker, Archaeologist</td>
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<td></td>
<td>James Barnes, Archaeologist</td>
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<tr>
<td>Hollister Field Office</td>
<td>Robert Beehler, Field Office Manager</td>
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<td></td>
<td>Erik Zaborsky, SCEP Archaeologist</td>
</tr>
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<td>Needles Field Office</td>
<td>Larry Morgan, Field Office Manager</td>
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<td>John Murray, Archaeologist</td>
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<tr>
<td>Palm Springs S-Coast Field Office</td>
<td>Gail Acheson, Field Office Manager</td>
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<tr>
<td></td>
<td>Wanda Raschkow, Archaeologist</td>
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<td>Redding Field Office</td>
<td>Steve Anderson, Field Office Manager</td>
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<td>Eric Ritter, Archaeologist</td>
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<td>Ridgecrest Field Office</td>
<td>Hector Villalobos, Field Office Manager</td>
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<td>Surprise Field Office</td>
<td>Owen Billingsley, Field Office Manager</td>
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<td>Penni Borghi, Archaeologist</td>
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<tr>
<td>Ukiah Field Office</td>
<td>Rich Burns, Field Office Manager</td>
</tr>
<tr>
<td></td>
<td>Yolanda Chavez, SCEP Tribal Liaison</td>
</tr>
</tbody>
</table>
The United States Department of Agriculture, Forest Service (USFS) is a land management agency throughout the country. The Pacific Southwest Region of the USFS manages 18 National Forests in California and provides technical and financial assistance through the State Tribal and Private Forestry Programs and Research. The National Forests encompass more than 20 million acres in the mountainous areas of the state—almost 1/5 of the total land area in California and the indigenous lands of California Indians.

Forest Service policy states that the U.S. Forest Service will—

- Maintain a governmental relationship with federally recognized governments.
- Implement our programs and activities honoring Indian rights and fulfill legally mandated trust responsibilities.
- Administer programs and activities to address and be sensitive to traditional religious beliefs and practices.
- Provide research, transfer of technology and technical assistance to Indian governments.

If you have a question or are interested in the U.S.D.A. Forest Service, its programs or the national forests it manages, please contact the Forest Service Tribal Program Manager nearest you.

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Laura Kim, Park Archeologist (209) 379-1314; fax (209) 379-1212
Jeannette Simons, Park Historic Preservation Officer and American Indian Liaison
(209) 379-1372
ABOUT THE ...
ADVISORY COUNCIL ON HISTORIC PRESERVATION

Mission Statement

The mission of the Advisory Council on Historic Preservation is to promote the preservation, enhancement, and productive use of our Nation's historic resources, and advise the President and Congress on national historic preservation policy.

—adopted by ACHP membership May 31, 2002

Introduction

The Advisory Council on Historic Preservation (ACHP) is an independent Federal agency that promotes the preservation, enhancement, and productive use of our Nation's historic resources, and advises the President and Congress on national historic preservation policy.

The goal of the National Historic Preservation Act (NHPA), which established ACHP in 1966, is to have Federal agencies act as responsible stewards of our Nation's resources when their actions affect historic properties. ACHP is the only entity with the legal responsibility to encourage Federal agencies to factor historic preservation into Federal project requirements.

As directed by NHPA, ACHP serves as the primary Federal policy advisor to the President and Congress; recommends administrative and legislative improvements for protecting our Nation's heritage; advocates full consideration of historic values in Federal decisionmaking; and reviews Federal programs and policies to promote effectiveness, coordination, and consistency with national preservation policies.

ACHP Activities

ACHP's 20 statutorily designated members, including the Chairman who heads the agency, address policy issues, direct program initiatives, and make recommendations regarding historic preservation to the President, Congress, and heads of other Federal agencies. Members meet four times per year to conduct business.

An Executive Committee, headed by the Chairman and Vice Chairman, governs agency operations such as management, budget, legislative policy, and oversight of the most prominent Section 106 cases. Also on the Executive Committee are ACHP members who chair three standing committees that correspond to ACHP's three program areas.

- **Preservation Initiatives** focuses on partnerships and program initiatives such as heritage tourism to promote preservation with groups such as State and local governments, Indian tribes, and the private sector.
Communications, Education, and Outreach conveys ACHP's vision and message to constituents and the general public through public information and education programs, and a public recognition program for historic preservation achievement.

Federal Agency Programs administers the National Historic Preservation Act's Section 106 review process and works with Federal agencies to help improve how they consider historic preservation values in their programs.

A small professional staff, which supports ACHP's daily operations, is headquartered in Washington, DC, with an office in Lakewood, Colorado.

Section 106

Section 106 applies when two thresholds are met: 1) there is a Federal or federally licensed action, including grants, licenses, and permits, and 2) that action has the potential to affect properties listed in or eligible for listing in the National Register of Historic Places.

Section 106 requires each Federal agency to identify and assess the effects of its actions on historic resources. The responsible Federal agency must consult with appropriate State and local officials, Indian tribes, applicants for Federal assistance, and members of the public and consider their views and concerns about historic preservation issues when making final project decisions.

Effects are resolved by mutual agreement, usually among the affected State's State Historic Preservation Officer or the Tribal Historic Preservation Officer, the Federal agency, and any other involved parties. ACHP may participate in controversial or precedent-setting situations.

To contact ACHP, write, call, or e-mail:

Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW, Suite 809
Old Post Office Building
Washington, DC 20004
Phone: (202) 606-8503
E-mail: achp@achp.gov
Web site: www.achp.gov

Updated June 22, 2004

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*Updated August 18, 2005*
Four members of the general public are appointed by the President, including the chairman and vice chairman:

**Chairman John L. Nau, III**  
Houston, Texas (term of office: 2005-2009)  
John Nau is president and CEO of Silver Eagle Distributors, L.P., a position he has held since 1990. He was appointed to the Texas Historical Commission by the Governor in 1993, and was reappointed to the commission in 1999 by then-Governor George W. Bush. Since 1995, Nau has served as chairman of the commission. In addition, he serves on the board of directors of The Civil War Preservation Trust, is a member of the Texas State History Museum Advisory Committee, and was appointed to the President's Transportation Infrastructure Streamlining Task Force.

Nau also serves on the board of the Downtown Historic District, is an advisory board member for the Greater Houston Preservation Alliance, and is a charter member of the Monticello Cabinet, Charlottesville, Virginia. He also sits on the executive committee of the National Capital Campaign of the University of Virginia, and the Board of Directors of the Greater Houston Partnership.

**Vice Chairman Bernadette Castro**  
Bernadette Castro is commissioner of the New York State Office of Parks, Recreation, and Historic Preservation, and is the New York State Historic Preservation Officer. As commissioner, she coordinated the first Historic Preservation Summit in New York State to educate business leaders on Federal tax credits and the role of historic preservation in community revitalization. Castro also serves on the board of the National Association of State Outdoor Recreation Liaison Officers and is active in the National Association of State Park Directors. In 1995, she was appointed to Governor George E. Pataki's cabinet. Prior to running for U.S. Senate in 1994, she was president of Castro Convertibles, a family owned, New York based company.

In 2003, Castro was awarded the Theodore Roosevelt Medal for Conservation from The History Channel, as well as the Cornelius Amory Pugsley Regional/State Level Award from the American Academy for Park and Recreation Administration in association with The National Park Foundation and the Theodore Roosevelt Legacy of Conservation Award through the Audubon Society's Theodore Roosevelt Sanctuary.

**Emily Summers**  
Dallas, Texas (term of office: 2002-2006)  
Emily Summers is the principal of Emily Summers Design in Dallas, Texas. She is a member of the American Institute of Architects, the American Architecture Foundation, and the American Society of Interior Designers, and is registered as an interior designer in the State of Texas. She currently serves on the Foundation Advisory Council of the University of Texas at Austin School of Architecture. As part of her 34-year affiliation with the Dallas Museum of Art, Summers is on
the Artists Awards Committee and the Marketing Committee, Building Committee, Education Committee, and Associate Committee. She is also a founding committee member of the Dallas Architectural Forum.

Mark A. Sadd
Charleston, West Virginia (term of office: 2005-2008)
Mark A. Sadd is a partner with the law firm of Lewis Glasser Casey & Rollins PLLC in Charleston, West Virginia, and has practiced law since 1992. Sadd has had a professional emphasis on real property, zoning, planning, land-use law, taxation, and other matters pertaining to property issues. He is a city councilman at large for West Virginia's capital, Charleston.

Four historic preservation expert members are appointed by the President:

Susan S. Barnes
Aurora, Illinois (term of office: 2002-2006)
Susan Barnes is the president and CEO of The Landmark Group of Companies, headquartered in an Aurora, Illinois, landmark firehouse. She is founder and owner of the company, which specializes in the acquisition, renovation, and management of its multi-million dollar portfolio of Chicago-area historic properties. She currently represents Illinois on the Board of Advisors of the National Trust for Historic Preservation in Washington, DC. Barnes serves on the Chicago Advisory Board of The Trust for Public Land and the Board of the Landmarks Preservation Council of Illinois in Chicago. Having worked on the finance committees of several local, State, and Federal elected officials, she continues, as she has since 1986, on the Congressional finance committee of Speaker of the House J. Dennis Hastert (R-IL).

John G. Williams, III
John G. Williams, III, is a founding partner with Hoshide Williams Architects in Seattle, Washington, and is a member of the American Institute of Architects, Seattle Chapter. For decades, he has been involved professionally and personally with historic preservation issues. Williams is currently chairman of the Washington State Governor's Advisory Council on Historic Preservation, is the national vice president of Preservation Action, and serves on the Board of Advisors of the National Alliance of Preservation Commissions, for which he is a former chairman.

Ann A. Pritzlaff
Denver, Colorado (term of office: 2003-2007)
Ann A. Pritzlaff currently is Conference Coordinator for Colorado Preservation, Inc., where she works with the annual Saving Places conference, which is the largest statewide preservation conference in the Nation. With a long preservation resume that includes serving as the Arizona State Historic Preservation Officer, she holds a bachelor's degree from Scripps College and a master's degree in historic preservation from the University of Vermont.

Julia A. King
St. Mary's City, Maryland (term of office: 2003-2007)
Julia A. King is currently chief of archeological services at the Maryland Archaeological Conservation Laboratory, and is also an adjunct instructor of anthropology at St. Mary's College of Maryland. With more than two decades' experience as an archeologist, researcher, author, and educator, King holds a Ph.D. in American civilization from the University of Pennsylvania, a master's degree in anthropology from Florida State University, and a bachelor's degree in anthropology and history from the College of William and Mary.

A Native American or Native Hawaiian member, a governor, and a mayor are appointed by the President:

Native American Member Gerald Peter Jemison
Gerald Peter Jemison is a historic site manager for the New York State Office of Parks, Recreation, and Historic Preservation for the Ganondagon State Historic Site in Victor, where he has been involved since 1985. An enrolled member of the Seneca Nation of Indians, Jemison will assume a vital position in assisting the development of the ACHP's heritage programs relating to Native Americans, Native Hawaiians, and Native Alaskans, as well as adding his expertise to the overall range of historic preservation issues.

Governor Timothy Pawlenty
Timothy Pawlenty was elected governor in November 2002 after serving for 10 years in the Minnesota House of Representatives, including four years as House Majority Leader. Prior to that service, he was an Eagan City Councilman, Hennepin County prosecutor, and in private practice. He is an attorney and holds undergraduate and law degrees from the University of Minnesota.

Mayor
vacant

Two Federal agency heads and the Architect of the Capitol are permanent members of ACHP:

Secretary of Agriculture (Hon. Michael O. Johanns)
Designee: Mark Rey, Under Secretary for Natural Resources and Environment

Secretary of the Interior (Hon. Gale A. Norton)
Designee: Fran P. Mainella, Director, National Park Service

Architect of the Capitol (Alan M. Hantman, FAIA)

Four Federal agency heads are designated by the President to terms on ACHP:

Administrator, Environmental Protection Agency (Hon. Stephen L. Johnson)
Designee: Kelly Sinclair, White House Liaison, Environmental Protection Agency
Administrator, General Services Administration (Hon. Stephen A. Perry)  
*Designee: vacant*

Secretary of Defense (Hon. Donald H. Rumsfeld)  
*Designee: Philip W. Grone, Deputy Under Secretary of Defense (Installations and Environment), Department of Defense*

Secretary of Transportation (Hon. Norman Y. Mineta)  
*Designee: Hon. George E. Schoener, Deputy Assistant Secretary for Transportation Policy, Department of Transportation*

Ex-officio representatives of national preservation organizations round out ACHP's membership:

Chairman of the National Trust for Historic Preservation (Jonathan Kemper)  
*Designee: Richard Moe, President, National Trust for Historic Preservation*

President of the National Conference of State Historic Preservation Officers (Jay D. Vogt)  
*Designee: Nancy Schamuh, Executive Director, National Conference of State Historic Preservation Officers*

**ACHP Observers:**

Designated observers may actively participate in certain activities of the membership, but may not make or second any motion and may not vote.

Secretary, Department of Housing and Urban Development  
(Hon. Alphonso R. Jackson)

Secretary, Department of Commerce  
(Hon. Carlos M. Gutierrez)

Secretary, Department of Education  
(Hon. Margaret Spellings)

General Chairman, National Association of Tribal Historic Preservation Officers (Alan S. Downer)

*Updated September 2, 2005*
MISSION STATEMENT

The mission of the American Indian Liaison Office is to improve relationships between American Indian Tribes, Alaska Natives, Native Hawaiians and the National Park Service through consultation, outreach, technical assistance, education, and advisory services.

PROGRAM OBJECTIVES

Assist National Park Service field and program managers to carry out relationships with American Indian Tribes and Alaska Native groups on a government-to-government basis.

Educate National Park Service field and program managers concerning Indian Self-Determination, Tribal Self-Governance, and effective means of working with tribes.

Help ensure that American Indian, Alaska Native and Native Hawaiian concerns are considered in policies, regulations, and programs that affect them.

Assist and promote American Indian participation in carrying out National Park Service policies, programs, and activities.

Work with other National Park Service Indian Offices, Indian Offices in other agencies, tribes, intertribal organizations and other National Park Service partners in pursuing the above objectives.

MAJOR ACTIVITIES

Identify and address situations involving the National Park Service and Indian tribes that may impact National Park Service policy or precedent.


Develop National Park Service policy and procedures concerning Tribal Self-Governance on behalf of the Associate Director, Park Operations and Education. Assist in creating partnerships with tribal governments, tribal members, tribal colleges, and tribal organizations.

Assist National Park Service offices and parks in identifying and resolving conflicts and disagreements with Indian tribes and intertribal organizations.
CONTACTS FOR MORE INFORMATION

Mailing Address:

National Park Service
1201 Eye St NW Org 2560
Washington DC 20005-5905

202-354-6965
fax 202/371-6609

NPS American Indian Liaison Office Staff:

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Ronnie Emery, Tribal Liaison Specialist
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Leslie C. Harmon, Administrative Technician
(Leslie_C._Harmon@nps.gov)
The Native American Graves Protection and Repatriation Act (NAGPRA) is a Federal law passed in 1990. NAGPRA provides a process for museums and Federal agencies to return certain Native American cultural items -- human remains, funerary objects, sacred objects, and objects of cultural patrimony - to lineal descendants, culturally affiliated Indian tribes, and Native Hawaiian organizations.

The National NAGPRA program assists the Secretary of the Interior with some of the Secretary's responsibilities under NAGPRA, and focuses on NAGPRA implementation outside of the National Park System.

Among its chief activities, National NAGPRA develops regulations and guidance for implementing NAGPRA; provides administrative and staff support for the Native American Graves Protection and Repatriation Review Committee; assists Indian tribes, Native Alaskan villages and corporations, Native Hawaiian organizations, museums, and Federal agencies with the NAGPRA process; maintains the Native American Consultation Database (NACD) and other online databases; provides training; manages a grants program; and makes program documents and publications available on the Web.

**National NAGPRA Contact Information**

Mailing Address (U.S. Postal Service):
National NAGPRA Program
National Park Service
1849 C Street, NW (2253)
Washington, D.C. 20240

Delivery Address (commercial delivery service):
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National Park Service
1201 Eye Street, NW (8th floor)
Washington, D.C. 20005

Telephone: 202-354-2201
FAX: 202-371-5197
E-mail: NAGPRA_Info@nps.gov

**National NAGPRA Organizational Chart:**
Secretary of the Interior
Assistant Secretary for Fish and Wildlife and Parks
Director, National Park Service
Associate Director, Cultural Resources
National NAGPRA program
National NAGPRA Program Staff:

National NAGPRA Program Manager
Sherry Hutt
202-354-1479
Sherry_Hutt@nps.gov

Program Secretary
Robin Coates
202-354-2201

National NAGPRA Program Officers
National NAGPRA program officers provide information and technical assistance in their specific areas of responsibility.

Jaime Lavallee - Federal Register notices
202-354-2204
Jaime_Lavallee@contractor.nps.gov

Tim McKeown - Regulations, Review Committee, and Federal Register notices
202-354-2206
Tim_McKeown@nps.gov

Cynthia Murdock - Databases, Federal Register notices, NACD and Tribal Contacts, and culturally unidentifiable human remains inventory
202-354-2205
Cynthia_Murdock@nps.gov

Michelle Joan Wilkinson - Grants
202-354-2203
Michelle_J_Wilkinson@contractor.nps.gov
National NAGPRA Review Committee

About the Review Committee

The Native American Graves Protection and Repatriation Review Committee was established under NAGPRA "to monitor and review the implementation of the inventory and identification process and repatriation activities." They have requested that information on compliance with the law be maintained and they make annual reports to Congress. They also hear disputes on factual matters to resolve repatriation issues between Indian tribes, Alaska Native villages and corporations, and Native Hawaiian organizations. The Review Committee is an advisory body under the Federal Advisory Committee Act (FACA). Questions regarding Federal agency procedural practice are addressed by the Administrative Procedures Act, 5 U.S.C. Section 501 et seq. Review Committee members are appointed by the Secretary of the Interior from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations. Review Committee information includes:

Membership
Announcements (including upcoming meetings)
Charter PDF or Text
Procedures
Meeting Minutes
Findings and Recommendations
Reports to the Congress

The National NAGPRA program provides administrative and staff support to the review committee on behalf of the Secretary of the Interior. The Manager, National NAGPRA program, serves as the Review Committee's Designated Federal Officer.
PURPOSE: Monitor and review the implementation of the inventory and identification process and repatriation activities required under the Inventory, Summary, and Repatriation sections of the Native American Graves Protection and Repatriation Act.

AUTHORITY: 25 U.S.C. 3006

TERMS: 4 or 6 years.

Dr. Garrick Bailey
Professor, Department of Anthropology
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Tulsa, Oklahoma 74104
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nominating source(s): American Anthropological Association

Mr. Willie Jones
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fax: (360) 312-0367
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traditional religious leader
term expiration: May 20, 2008
nominating source(s): Lummi Tribe of the Lummi Reservation, Washington

Mr. Colin C. Kippen
Executive Director, Native Hawaiian Education Council
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term expiration: August 8, 2009
nominating source(s): Concurrence of all committee members
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nominating source(s): American Association of Museums

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Spiritual Advisor to the Mille Lacs Band  
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traditional religious leader  
term expiration: October 27, 2007  
nominating source(s): Mille Lacs Band of Minnesota Chippewa Tribe, Minnesota

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email: vin@unc.edu  
term expiration: May 20, 2008  
nominating source(s): Society for American Archaeology

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term expiration: November 21, 2006  
nominating source(s): Huna Heritage Foundation

Last updated August 16, 2005
ABOUT TRIBAL PRESERVATION

Over the last 500 years, Indian cultures have experienced massive destruction, but the tide is changing. Indian tribes are using their resources to halt the loss of language, tradition, religion, objects, and sites. Fundamentally different in character from other components of American society, Indian tribes are living cultures that can continue and be strengthened only through the perpetuation of their traditions. Tribes, therefore, are reintroducing ceremonies, teaching languages, and seeking the culturally appropriate treatment of tribal objects and sites. These activities are not peripheral to tribal life; they are basic to healthy contemporary tribal societies.

WHO WE ARE

The National Park Service (NPS) Tribal Preservation Program assists Indian tribes in preserving their historic properties and cultural traditions. The program originated in 1990, when Congress directed NPS to study and report on preservation funding needs. The findings of that report, the Keepers of the Treasures—Protecting Historic Properties and Cultural Traditions on Indian Lands, are the foundation of the Tribal Preservation Program. Based on that report, Congress has appropriated annual grants for tribal preservation (see STATS below).

PROGRAM PARTNERS

The Tribal Preservation Program is dedicated to working with Indian tribes, Alaska Native Groups, Native Hawaiians, and national organizations, to preserve and protect resources and traditions that are of importance to Native Americans. Given the limited funding levels of the program, its main purpose is to help tribes strengthen their capabilities for operating sustainable preservation programs. Projects that provide training for tribal members and have a lasting impact on the tribe are given the highest priority in the funding process.

HOW WE HELP

The grant awards of the tribal preservation program provide much needed assistance to Indian communities interested in protecting their cultural heritage. The federal grant funds used for these preservation projects are often leveraged with tribal and private funds in cooperative projects that benefit tribal, National Park, and non-profit groups simultaneously.
To date, 46 tribes have signed an agreement with NPS to assume formal preservation responsibilities under Section 101(d) of the National Historic Preservation Act. Since 1990, the Tribal Preservation Program has directly assisted over 260 tribes through the award of 585 grants. Over $29.3 million in grant funds has been used to assist tribes in assuming State Historic Preservation Office responsibilities, in drafting preservation ordinances, implementing cultural resource management plans, identifying and protecting historic sites, and conducting preservation needs assessments. The average grant award is $50,000.

RELATED HPS PROGRAMS
(web links through website http://www.cr.nps.gov/hps/tribal/tribal_p.htm)
Historic Preservation Planning
Cultural Resource Mapping Services
Federal Agency Preservation Assistance Program
Federal Historic Preservation Tax Incentives
Historic Landscape Initiative
Historic Preservation Fund
Technical Preservation Services for Historic Buildings
National Historic Landmarks Assistance Initiative

NPS PROGRAMS
(web links through website http://www.cr.nps.gov/hps/tribal/tribal_p.htm)
American Indian Liaison Office
National Register of Historic Places
Archeology and Ethnography

NATIONAL ORGANIZATIONS
(web links through website http://www.cr.nps.gov/hps/tribal/tribal_p.htm)
National Association of Tribal Historic Preservation Officers (NATHPO)
National Trust for Historic Preservation
United South and Eastern Tribes (USET)

LEARN MORE ABOUT IT

Write: Tribal Preservation Program, Heritage Preservation Services, National Park Service, 1201 Eye St., NW, 2255, Washington, DC. 20005

Call: James Bird at (202) 354-1837; fax (202) 371-1794

e-mail: nps_hps-info@nps.gov
What is the National Association of Tribal Historic Preservation Officers (NATHPO)?

Founded in 1998, the Association is a national non-profit membership organization of Tribal government officials who implement federal and tribal preservation laws. NATHPO's overarching purpose is to support the preservation, maintenance and revitalization of the culture and traditions of Native peoples of the United States. This is accomplished most importantly through the support of Tribal Historic Preservation Programs as acknowledged by the National Park Service.

Tribal Historic Preservation Officers (THPOs) have the responsibilities of State Historic Preservation Officers on tribal lands and advise and work with federal agencies on the management of tribal historic properties. THPOs also preserve and rejuvenate the unique cultural traditions and practices of their tribal communities.

NATHPO activities include monitoring the U.S. Congress, Administration, and state activities on issues that affect all Tribes and monitoring the effectiveness of federally mandated compliance reviews and identification, evaluation, and management of tribal historic properties. Examples of completed and ongoing projects: "Tribal Tourism Toolkit for the Lewis and Clark Bicentennial and Other Tribal Opportunities (2002)," and "Many Nations Media Project - News from the Lewis & Clark Trail (2002-5)," and "Treaty Research Project for Continental U.S. (2001)."

NATHPO also offers training and technical assistance on federal historic preservation laws.

Principles and Purposes of NATHPO (NATHPO is guided by three main principles)

*Tribal Sovereignty* – the inherent right of Indian Nations to self-government

*Confidentiality* – recognition of the need to respect the confidentiality of information regarding Native cultural and ceremonial practices and places of religious or cultural significance.

*No boundaries* – NATHPO recognizes that the cultural and heritage preservation interests of Indian Nations and their peoples often extend far beyond the boundaries of present-day reservations -- often crossing state and national boundaries -- and stands ready to assist in activities relating to transboundary cultural and environmental issues.
The National Association of Tribal Historic Preservation Officer's activities include, but are not limited to:

Supporting the culture and heritage activities of the governments of federally recognized Indian tribes, particularly the activities of the various Tribal Historic Preservation Officers (THPOs).

Providing technical assistance to THPOs and traditional religious and cultural authorities of Tribes.

Providing technical assistance to tribal governments considering or attempting to develop Tribal Historic Preservation Programs in accordance with section 101(d)(2) of the National Historic Preservation Act.

Promoting public interest, as appropriate, in tribal historic preservation and cultural preservation programs.

Encouraging and assisting in the preservation of historic and cultural properties important to Indian tribes and Native peoples.

Providing a forum for discussion and dissemination of ideas for more effective cultural heritage preservation programs for Tribal governments.

Increasing public awareness, including government agencies, of the importance of the physical environment in the role and preservation of Native traditions and culture.

Become a NATHPO Member

Regular Membership is restricted to Tribal Historic Preservation Officers who are officially designated by a federally-recognized Indian tribe or Alaska Native group to direct a program approved by the National Park Service. Annual Dues for Regular Members are tied to the amount of the annual grant from the NPS to the Tribal government to help support its Tribal Historic Preservation Officer functions.

Tribal Associate Membership is open to officials directing tribal preservation programs who are either seeking or who are considering seeking National Park Service approval, as well as officials directing tribal programs dedicated to or actively supporting the purposes of NATHPO. Associate Membership Dues are $250 a year.
For more information contact:

Ms. D. Bambi Kraus, NATHPO President, Washington, D.C. National Office
Mailing Address - NATHPO, P.O. Box 19189, Washington, D.C., 20036-9189
Telephone - 202.628.THPO (202-628-8476)
Email - info@nathpo.org

President Profile
Ms. D. Bambi Kraus is the NATHPO president. Since graduating from Stanford University, she has resided in Washington, DC, and has been committed to working with and advocating for Native rights. She has worked as a senior advisor for President Clinton's Initiative on Race, the National Indian Policy Center, the National Advisory Council on Indian Education (U.S. Department of Education), and the National Anthropological Archives (Smithsonian Institution). Among other achievements, she completed a children's book in 1998 with and about her mother, Frances Nannauck Kraus. Ms. Kraus is a Tlingit Indian, whose family is from Kake, Alaska.
List of Tribal Historic Preservation Officers (THPOs) in California
(NATHPO updated 9/2/05)

Big Pine Paiute Tribe of the Owens Valley
Bill Helmer, THPO
PO Box 700
Big Pine, CA 93513
760.938.2003 phone
760.938.2942 fax
Email: amargosa@aol.com

Blue Lake Rancheria Tribe of Indians
Paul Angell, THPO
P. O. Box 428
Blue Lake, California 95525-0428
707.668.5101 phone
707.668.4272 fax

Stewart's Point Rancheria Kashia Band of Pomo Indians
Mr. Reno Franklin, THPO
3535 Industrial Drive, Suite B-3
Santa Rosa, CA 95403
707.591.0580 phone
707.591.0583 fax

Timbisha Shoshone Tribe
PO Box 206
Death Valley, CA 92328-0206

Wiyot Tribe - Table Bluff Reservation
Marnie Atkins, THPO
1000 Wiyot Drive
Loleta, CA 95551
707.733.5055 phone
707.733.5601 fax
E-mail: cultural@wiyot.com

Yurok Tribe
Dr. Thomas M. Gates, THPO
Yurok Tribe Culture Department
15900 Hwy 101N
Klamath, CA 95548
707.482.2921 phone
707.482.1722 fax
E-mail: ythpo@yahoo.com

About the...National Association of Tribal Historic Preservation Officers (NATHPO)
including California THPOs
PART 4:

OTHER USEFUL INFORMATION
Other paths to useful information are offered in Part 4.

Society for California Archaeology (SCA). Now in its 40th year, the SCA is a nonprofit scientific and educational organization with membership open to everyone with an interest in California's cultural heritage and archaeology. Included are the Ethical and Professional Standards of its member archaeologists, membership information, and listings of the current Executive Board and standing Committees (Item 4-1). Membership in the SCA is open to all, and all interested SCA members are invited to join our SCA Native American Programs Committee network (contact Janet Eidsness at (530) 629-3153). Included is a description of the SCA California Indian Heritage Preservation Award (CIHPA), established to each year honor Native Americans who have made important contributions towards meeting our common goals. Information is included about the SCA Annual Meeting scheduled for late March 2006 in Ventura. For the first time, the SCA Native American Programs is coordinating scholarships to California Indians interested in participating in the Ventura meeting – see Item 4-1 for our fundraising goals, hoped for scholarship award amounts, application deadlines and selection criteria.

The Code of Conduct and Standards of Research Performance for Registered Professional Archaeologists (RPAs) are included as Item 4-2.

Highlighted are the many Internet web links and sites concerning CRM topics and opportunities for Native Americans to participate in “the process” and learn more about a variety of related topics (Item 4-4).

Finally, every good desk reference must have a glossary and list of acronyms (Item 4-5), especially for a subject such as CRM with its CEQA, NEPA, ARPA, NAGPRA, BLM, etc.
SCA's Mission

The Society for California Archaeology is a nonprofit scientific and educational organization dedicated to research, understanding, interpretation and conservation of California's heritage. Membership is open to everyone with an interest in California archaeology.

SCA promotes cooperation among archaeologists in California by:

1. Conducting symposia and meetings to share information on new discoveries and techniques
2. Publishing an annual Proceedings on archaeological research in California
3. Publishing a Newsletter on current topics of concern with news and commentaries
4. Promoting standards and ethical guidelines for the practice of archaeology

The Society seeks to increase public appreciation and support for archaeology in California by:

1. Helping planners, landowners and developers understand their obligations and opportunities to manage archaeological sites
2. Representing the concerns of California archaeologists before government commissions and agencies, and on legislation
3. Encouraging the conservation of archaeological resources for future research and public interpretation
4. Discouraging vandalism and exploitation of archaeological resources
5. Recognizing the significance that many sites possess for ethnic and local communities
6. Encouraging respect, appreciation and a better understanding of California's diverse cultural heritage

SCA Article XVI: Code of Ethical Guidelines

Whereas it is the intent of the Society not to violate the Constitutional rights of any Member or citizen of the United States of America, the following guidelines shall be adhered to by the Society for California Archaeology Membership (universities and institutions included) to advise the most ethical course of action in the various archaeological matters which may arise.

Section 1. Ethical Responsibility to the Public

1.1 An archaeologist shall:
   a. Recognize a primary commitment to present the public with the results of field research in a responsible manner, such as publication or public displays.
   b. Actively support conservation of the archaeological resource base by recording sites, advocating protection or salvage in impending destruction, or any other means available.
c. Encourage conformance with the UNESCO Convention, General Conference, Paris, November 14, 1970, and U.S. Public Law 97-446: Title III, the Convention on Cultural Property Implementation Act of 1983, which prohibit illicit export or import and/or sale of cultural property.

d. Contact pertinent representatives of the Native American or other ethnic peoples during the planning phase preceding archaeological programs of excavation or extensive reconnaissance, and it shall be the express purpose of such communications to develop a design for field work in coordination with the interests and sensitivities of those pertinent people.

e. Encourage careful compliance with procedures specified in state and federal law regarding the discovery of Native American human remains. (See Section 7050.5 of the state Health and Safety Code; and Section 5097.5 et seq. of the state Public Resources Code, Division 5, Chapter 1.75, added by amendments, Senate Bill 297 of 1982, Chapter 1492.)

f. Whenever a site of religious, ceremonial, or social significance to a Native American or other ethnic community is encountered, contact appropriate representatives of these communities and respect their expressed interests and concerns while considering the archaeological values of the site's resources.

g. Encourage the complete preservation of any significant cultural site for which the traditional religious beliefs of the pertinent ethnic peoples will not allow scientific excavation/salvage or the cost of salvage is prohibitive.

h. Support the rights of Native Americans or other ethnic peoples to practice their ceremonial traditions on or near sites, in labs, around artifacts, or other locations.

1.2 An archaeologist shall not:

   a. Collect artifacts or features for the purposes of private collection, sale of the items, or any other nonscientific activity.

   b. Excavate or otherwise disturb any location of a previous Native American settlement, ceremonial locality, cemetery, or other mortuary context which was being used until recently or is still being used, and for which native or other ethnic peoples maintain a sense of spiritual affinity, without the full concordance of those pertinent peoples.

   c. Allow his or her name to be used in the support of illegal or unethical activity.

   d. Advocate unscientific destruction of cultural resources or testify in a public hearing to assist other individuals in a less than scientific destruction of said resources.

   e. Advocate the destruction of identified or known sacred/religious sites of Native American or other ethnic peoples, merely because there are no observable or quantifiable artifacts or features.

   f. Knowingly misrepresent oneself as "qualified" in matters for which there is a reasonable doubt of qualification and in which the existence of a cultural resource is at stake.

   g. Knowingly desecrate, deface, or destroy a Native American or other ethnic people's sacred item or site.

Section 2. Ethical Responsibility to Colleagues

2.1 An archaeologist shall:

   a. Give adequate credit to colleagues in personal communications, known field research, and unpublished manuscripts when writing publications or reports intended for public review.

   b. Make every reasonable attempt to communicate and cooperate with all archaeologists working in the same field area.
c. Review a representative sample of published and available archived manuscripts (from Regional Information Centers) and collections when conducting surveys or excavations.

d. Make every reasonable attempt to read current literature on techniques and research designs prior to conducting field work so that as many as possible research designs of colleagues may benefit from the data recovery.

e. Know and comply with all federal, state, and local ordinances applicable to the data base.

2.2 An archaeologist shall not:

a. Publish a colleague's active research without written permission, the death of that colleague, or documentation that five years have elapsed since field recovery.

b. Enter into known or defined research areas with the intent of recovering cultural collections without attempting advanced consultation with colleagues already working there. That consultation should include sharing the proposed research design.

c. Accuse a colleague of unethical or illegal conduct without adequate documentation.

d. Institutionally record a cultural resource found by a colleague without citing the original or principal discoverer.

e. Commit oral or written plagiarism.

f. Refuse reasonable requests from a colleague to share data, as long as there is an arrangement for full citation.

g. Be party to the subversion of legal procedures set forth for the preservation of the resource base.

Section 3. A Code of Scientific Ethics

3.1 An archaeologist shall:

a. File copies of all site survey records and EIR/EIS survey reports, evaluation/testing reports, and excavation reports at the appropriate California Archaeological Inventory Regional Information Center within 30 days upon completion of the project.

b. Prepare a research design orienting a scientific data recovery strategy to attempt to solve valid archaeological problems in all field research which disturbs the original context of cultural resources.

c. Make arrangements prior to field investigations for curation of all field notes, photographs, maps, graphs, recovered artifacts, features, ecofacts, soil samples, and other data. This arrangement should include future availability by colleagues and the public.

d. Attempt to involve pertinent Native American and other ethnic cultural centers (and museums) in the educational analysis, display, and long-term care of scientific collections.

e. Make arrangements for security at all open excavation sites where vandalism is possible.

f. Obtain all necessary permits and permission from landowners prior to conducting field work.

g. Integrate as many research problems as possible into salvage operations to insure future utility of the recovered data.

h. Make all possible efforts to maintain detailed provenience records and narratives of field work and data collection and analysis so that future archaeologists may reconstruct the chain of logic in connection with their own data collection and analysis.

i. Contact all known archaeologists conducting active research within the regional boundaries of an agency-required environmental study and consider their opinions when evaluating the "significance" of sites. Also, make a reasonable attempt to integrate their data needs into survey and excavation designs in that region.
j. With the exception of emergency situations, avoid the destruction/sacrifice of upper midden strata to expedite the examination of lower levels. However, this caution is not valid if the upper levels have been adequately sampled.

k. Prepare a summary site report on all excavations within five years of completion of field work.

3.2 An archaeologist shall not:
   a. Encourage unscientific recovery of cultural remains.
   b. Carry out collection or excavation of cultural resources without a research design or solely for the purpose of teaching field techniques.
   c. Sign or enter into a contract which prohibits recording of sites at Regional Information Centers, filing of reports at public institutions, or sharing of data among colleagues.
   d. Publish or make available to the public the precise locations of cultural sites where there is a reasonable potential for vandalism of the sites to occur as a result of that action.

Section 4. A Code of Ethical and Professional Standards

4.1 An archaeologist shall:
   a. Make every possible effort to avoid relationships or actions which could legitimately be interpreted as conflict of interest.
   b. Avoid at all times possible bias in objective assessment of "site significance" or the "adequacy" of a report from friends, employers/employees, instructors, or business clients.
   c. Avoid the appearance of discrediting the work of a colleague for personal gain, such as money, political benefit, or even vengeance.
   d. Make full informational citation of all sources used in written reports. This shall include listing of personnel.

4.2 An archaeologist shall not:
   a. Fraudulently encourage agencies or firms to conduct archaeological surveys or tests on properties where it is confidently known that there is/are no cultural resources.
   b. Accept a contract to perform archaeological investigation in any situation where personal security might bias conclusions.
   c. Publish sensitive data on Native American peoples or other ethnic groups without their advice on the matter.
   d. Assist anyone in locating cultural sites when it is known that the sponsors intend to destroy the sites to avoid scientific salvage or the preservation efforts of some other group.
   e. Interfere with (or join into) a legal/contractual dispute over the "adequacy" of a study/report or "significance" of resources without first conferring with the colleague who was the primary consultant and informing that person of his or her intent to enter into the matter.

2005-2006 SCA Executive Board

An 8-member board oversees the activities of the SCA. The Business Office Manager also serves as a non-voting member of the Board. The President, President Elect, and Past President each hold a one-year term of office. Northern and Southern Vice Presidents, Secretary and Treasurer are two-year terms of office. Newsletter Editor and Business Officer Manager serve at the pleasure of the Board and their terms are variable. Current Board members are as follows:
President: Shelly Davis-King, Davis-King & Associates, P.O. Box 10, Standard, CA, 95373-0010; Tel: (209) 928-3443; e-mail: shellydk@mlode.com

Immediate Past President: Amy Gilreath, Far Western Anthropological Research Group, Inc., 2727 Del Rio Place, Suite A, Davis, CA 95616; Tel: (530) 756-3941; e-mail: amyj@farwestern.com

President-Elect: Frank E. Bayham, Department of Anthropology, California State University, Chico, Chico, CA, 95929-400; Tel: (530) 898-4540; e-mail: FBayham@csuchico.edu

Southern Vice-President: Andy York, EDAW Inc., 1420 Kettner Boulevard, Suite 620, San Diego, CA 92101; Tel: (619) 233-1454; e-mail: yorka@edaw.com

Northern Vice-President: Karin Anderson, Redwood National and State Parks, Cultural Resources, P.O. Box 7, Orick, CA 95555; Tel: (707) 464-6101 x 5210; e-mail: Karin_Anderson@nps.gov

Secretary: Janine Loyd, P.O. Box 7602, Cotati, CA, 94931; Tel: (707) 584-8200; e-mail: loyd@origer.com

Treasurer: Ted Jones, PO Box 579, Valley Ford, CA 94972-0579; Tel: (707) 876-9415; e-mail: tedjones@ap.net

SCA Business Office Manager – Greg White, Department of Anthropology, CSU Chico, Chico, CA 95929-0401. Tel. (530) 898-4360; e-mail: scaoffice@csuchico.edu

SCA Committees

Advanced Annual Meeting Planning
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Annual Meeting Local Arrangements
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cdelaney@vcccd.net

Annual Meeting Program Chair
Clay Lebow
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clebow@appliedearthworks.com

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Bennyhoff Memorial Award
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pat@farwestern.com

California Archaeological Site Stewardship Program (CASSP)
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open

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Web Site
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gwhite@csuchico.edu

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archytype@sbcglobal.net

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stephen_bryne@dot.ca.gov

Native American Heritage Commission (NAHC) Liaison
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FBayham@csuchico.edu

Publicity Liaison
Noelle Shaver
w: (951) 506-4038;
c: 949-400-1617;
nshaver@jsanet.com
SCA’s California Indian Heritage Preservation Award

The Society for California Archaeology is honored to formally recognize contributions made by California Indians to the preservation of their cultural heritage. The desire to preserve the heritage of this state is something that California Indians and archaeologists have in common. We know that many generations of California Indians have struggled for cultural survival and autonomy. Through this struggle, they have persevered, and in doing so, have given us a greater understanding of their culture and history. Their perseverance has also led to the current blossoming of California Indian heritage. Recognizing that any one individual or group may have participated in many different ways, some examples of the kind of contributions this award is meant to honor include the following:

- Maintain traditional ways and knowledge.
- Creating cultural centers, demonstration sites, and workshops.
- Publishing, and otherwise documenting traditional stories, songs, and history.
- Educating archaeologists, anthropologists, and historians, thereby building bridges of understanding between the academic and traditional worlds.
- Participating in legal contexts to safeguard the respect of their ancestors, achieve federal recognition of their tribes, or otherwise take part at state and national levels for the well-being of their communities.
- Improving the social, economic, and cultural well-being of their communities.

The SCA California Indian Heritage Preservation Award was created to honor California Indians who have contributed to one or more of these important accomplishments. It is with sincere appreciation and respect that we offer this award each year from the year 2000 onward.
Nominees for this award:

1. Need not be a member of the Society for California Archaeology.
2. Must be nominated by a member of the Society for California Archaeology.
   Nonmembers may request a member to submit a nomination on their behalf.
3. Must be a California Indian that has contributed to the preservation of their culture in a substantial way either through cumulative contributions or one exceptional contribution.

This award is most similar to the Society for California Archaeology's most prestigious award, the Lifetime Achievement Award. It is most often given for cumulative contributions (by an individual or group) that have spanned a lifetime and therefore tends to be reserved for elder candidates. It may, however, be given to more junior candidates for outstanding onetime contributions. The goal of the award is to recognize one outstanding individual or group. However, occasionally more than one award may be given. It is also possible to give the award to individuals or groups from the past.

The individual or group recipient of the California Indian Heritage Preservation Award is notified well ahead of time so that they and their supporters can plan to attend the banquet at the SCA Annual Meeting. They are identified during the meeting with a special ribbon on their name tag, are provided accommodation and travel by the SCA to the Annual Meeting, and are hosted at the banquet where the award recipient is announced.

**Past SCA California Indian Heritage Preservation Award Recipients:**

- 2000 Katherine Siva Saubel
- 2001 Otis Parrish
- 2002 Preston Jefferson Arrow-weed
- 2003 Larry Myers
- 2004 Carmen Lucas
- 2005 Patrick Orozco

*For a Nomination Application and Deadline Information, go to [www.scahome.org](http://www.scahome.org)*

*For updates on the SCA Annual Meetings, go to [www.scahome.org](http://www.scahome.org)*
Society for California Archaeology
40th Annual Meeting,
29 March–April 1, 2006, Ventura

Clay Lebow and Colleen Delaney-Rivera

The SCA 2006 Annual Meeting will be held at the newly renovated Ventura Beach Marriott in Ventura. Ventura has a little bit of something for everyone: museums, San Buenaventura Mission, antique shops, great restaurants, music venues, beaches. And to top it off, the Marriott is adjacent to San Buenaventura State Beach and only a block from the water. The local shuttle can pick up passengers from LAX, Burbank, Oxnard and Santa Barbara airports, as well as the Amtrak/Metrolink station, which should make it easy for out-of-town SCA members to attend without a car. Shuttle information will be included in the December Newsletter. The Marriott is accepting reservations now. Just call 1-888-236-2427 and identify yourself as an SCA conference attendee.

Please note that the 2006 annual meeting is earlier (late March/early April) than last year’s meeting (late April). Also, this year’s meeting is earlier in the week—Wednesday through Saturday—than last year’s meeting (Thursday through Sunday).

The program chair for the 2006 annual meeting is Clay Lebow (clebow@appliedearthworks.com); the local arrangements chair is Colleen Delaney-Rivera (sca2006@hotmail.com). Participants should contact the program chair or the local arrangement chair if they have questions concerning symposia, schedules, room arrangements, or other local arrangements. Coordinate with Barry Price (bprice@appliedearthworks.com) if you have items for the silent auction. Debbie McLean (Debbie.McLean@lsa-assoc.com) and Terri Fulton (Terri.Fulton@lsa-assoc.com) are coordinating volunteers for those folks that wish to volunteer.

Call for Papers

Proposals for organized symposia, workshops, and poster sessions are due by 30 November 2005; abstracts for contributed papers and posters are due by 23 December 2005. The form for submittals is on the following page; a new web home for the annual meetings will soon be established at www.SCAHome.org/events/index.html, and paper, poster, and symposia application forms will be posted in MS Word (.doc) and Adobe Acrobat (.pdf) formats. Symposium organizers should submit a single package containing the symposium and paper abstracts. Abstracts should not exceed 100 words. In addition to the form, please submit electronic copies of the titles and abstracts, preferably in MS Word or WordPerfect. All symposia, workshop, and poster session participants must be members in good standing with the SCA. So make sure your SCA membership is paid in full if you plan to participate.

All symposia, workshop, and poster session participants should be provided. Projectors and computers for multimedia presentations such as PowerPoint will not be provided—it will be the responsibility of each symposium organizer to ensure that participants using multimedia have the proper equipment and that laptops, projectors, and software are compatible.

Santa Cruz Island Tour

The SCA anticipates an all-day tour of Santa Cruz Island as part of the 2006 annual meeting. The tour would be either immediately before or after the meetings. Prospective participants should indicate their interest in the tour via e-mail to sca2006@hotmail.com. Sunday (2 April) is the preferred date. The tour will be arranged on the day that suits most potential participants.
Society for California Archaeology
40th Annual Meeting, March 29th – April 1st, 2006

Symposium, Poster, Workshop, and Round Table Proposal and Abstract

• Session Proposal Deadline: November 30, 2005

Please use this form to submit proposals for Symposium, Poster, Workshop, or Round Table Sessions (electronic abstracts preferred)

Submit completed form to:
Clayton G. Lebow, M.A., RPA
Vice President/Senior Archaeologist
Applied EarthWorks, Inc.
515 E. Ocean Ave., Suite G.
Lompoc, CA 93436
cllebow@appliedearthworks.com
(805) 737-4119 (office)
(805) 737-4121 (fax)
(805) 895-2958 (cell)

Symposium, Poster, Workshop, and Round Table Proposal and Abstract

Type of Session (circle one):

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<th>Symposium</th>
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<th>Round Table</th>
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Proposed Session Title:

Maximum Number Participants (Workshop/Round Table):

Proposed Chair(s):

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Audio-Visual Equipment Needs (circle all that apply):

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<th>Flip Chart</th>
<th>Slide Projector</th>
<th>Overhead</th>
<th>Other:__________</th>
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Attach abstract (maximum 100 words) and submit electronically to:
cllebow@appliedearthworks.com
Society for California Archaeology  
40th Annual Meeting, March 29th – April 1st, 2006

Paper Proposal and Abstract
- Paper Proposal Deadline: December 23, 2005

Please use this form to submit paper proposals and abstracts (electronic abstracts preferred)

Submit completed form to: Clayton G. Lebow, M.A., RPA,  
Vice President/Senior Archaeologist  
Applied Earthworks, Inc.  
515 E. Ocean Ave., Suite G.  
Lompoc, CA 93436  
clebow@appliedearthworks.com  
(805) 737-4119 (office)  
(805) 737-4121 (fax)  
(805) 895-2959 (cell)

Paper Proposal and Abstract
Type of Paper (circle one):

| Contributed Paper | Organized Symposium Paper |

Paper Title:

Author(s):

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Audio-Visual Equipment Needs (circle all that apply):

| Whiteboard | Flip Chart | Slide Projector | Overhead | Other: ________ |

Attach abstract (maximum 100 words) and submit electronically to:  
clebow@appliedearthworks.com
Purpose and Background:
The SCA Native American Programs Committee (NAPC) has been authorized by the Executive Board to establish a new Scholarship program to support the participation and attendance of California Indian scholars at the SCA Annual Meetings. Native American membership in SCA and attendance at Annual Meetings has been steadily increasing. In 2005, NAPC Chair Janet Eidsness received more than a dozen requests for funding assistance from California Indians who desired to attend the Annual Meeting in Sacramento.

Monies raised will be allocated specifically for the SCA California Indian Scholarship Program and would be in addition to the annual budget allocated by the Executive Board to the NAPC for meetings its annual targeted outreach goals. Contributions earmarked for the Scholarship fund may be tax deductible as the SCA is a 501(c)(3) non-profit educational organization.

Scholarship Awards for 2006 Meeting Participation (per individual):
For the first year (2006 Annual Meeting in Ventura), up to five (5) scholarships will be awarded, depending on the success of our fundraising. The value of each scholarship will be $800.00, as listed below.

- Travel (variable, depending on distance and type of transport): $100.00
- Lodging (at host meeting hotel, 3 nights at special rate incl. taxes) $315.00
- Per Diem-Meals (3 days) $120.00
- Pre-registration for Special Events (Silent Auction, Banquet) $75.00
- Pre-registration for Special Workshop offering (variable) $100.00
- SCA Meeting Registration Fee (variable depending on status) $90.00

Total value per scholar: $800.00

Fundraising Goal for Scholarships to Support Native American Participation in 2006 Meeting:
To meet our goal of awarding five (5) Native American Scholarships for the 2006 SCA Annual Meeting in Ventura, the NAPC proposes to raise a minimum of $4,000.00. If more than the target amount is raised, additional Scholarships may be awarded or the funds rolled over to the following year; if less than the target amount is raised, fewer or no Scholarships may be awarded.

Fundraising will be coordinated by the NAPC Chair and Committee Members with the SCA Fundraising Committee and the elected SCA Executive Board. Targeted for contributions will be Tribes and California Indian organizations, and grants may be pursued after approval from the Fundraising Committee.

Selection Criteria and Process:
The SCA NAPC will advertise scholarships offered to California Indians interested in attending the 2006 Annual Meeting in Ventura through various media.
Applicants will be asked to write a statement that addresses how their attendance at the Annual Meeting will benefit them, their community, and the SCA at large.

Criteria for selection of scholarship awards will include:
1. The applicant proposes to formally present a paper, participate in and/or organize a symposium, or submit a poster for poster session.
2. The applicant expresses a specific interest in attending the Meeting because a particular issue or topic is being presented.
3. The applicant proposes to represent and inform their community by learning more about the SCA and its Annual Meeting.
4. The applicant is interested in exploring possible career opportunities in archaeology, anthropology, cultural resources management, academia, heritage tourism or other related field.
5. Scholarships awards should be given to Native Americans from geographically distinct areas.

NAPC Scholarship Selection Subcommittee:
The NAPC Subcommittee for the 2006 SCA Annual Meeting Native American Scholarship awards consists of the following SCA members in good standing:
1. Janet P. Eidsness, SCA NAPC Chairperson
2. Yolanda Chavez, BLM Cultural Resources
3. Frank Ross, Coast Miwok Member Graton Rancheria
4. Margaret Hangan, USFS Archaeologist
5. Myra Herrmann, City of San Diego Cultural Resources
6. Geri Emberson, California Indian Assistance Program
7. Donald Storm, USFS Archaeologist

Schedule:
July 2005 Begin fundraising for 2005 Scholarship Fund
September 2005 Advertise & send out announcements about Scholarship offering
December 31, 2005 Deadline for receipt of Scholarship Applications
January 10, 2006 NAPC Subcommittee makes Scholarship selection recommendations to be forwarded to SCA Executive Board for their approval at the January 2006 meeting
January 20, 2006 Notifications given to successful scholarship awardees
February 1, 2006 NAPC Chairperson to oversee pre-registration for each awardee at hotel, meeting, special events, and workshop of choice
March 1, 2006 Travel cash awards ($220/person) mailed to selected scholars (before meeting)

To donate to or apply for a California Indian Scholarship to participate in the SCA Annual Meeting, please contact NAPC Chair, Janet Eidsness, at mailing address P.O. Box 1442, Willow Creek, CA 95573-1442, telephone (530) 629-3153, fax (530) 629-3153, email jpeidsness@yahoo.com
# 2005-2006 SCA Membership Application/Renewal Form

Print, complete, and mail this form to the address below.

Name: 

Affiliation: 

Address: 

City, State, ZIP: 

Telephone: 

FAX: 

Email: 

### New or Renewal? (circle one)
- New
- Renewal

### Membership Category? (circle one)

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<td>Regular</td>
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<td>Institution</td>
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### Optional Contribution Categories

- Native American Programs
- Avocational Society Award
- SCA Endowment Fund
- Archaeology Week
- Bennyhoff Memorial Fund
- Public Education Programs
- Site Stewardship Committee
- Other (name)

### TOTAL AMOUNT ENCLOSED

$ ________________

[ ] Check or money order made payable to "SCA" enclosed

[ ] Please charge my [ ] VISA or [ ] Mastercard or [ ] American Express

Credit card number (13 or 16 digits) ________________
Expiration date ________________

Cardholder name (please print) ____________________________
Cardholder signature ____________________________

Return To: Society for California Archaeology, CSU Chico, 25 Main, Suite 101, Chico, CA 95929-0401
FAX: 530-898-4220, Phone: 530-898-5733
About the Register of Professional Archaeologists

The Register of Professional Archaeologists (RPA) is a listing of archaeologists who have agreed to abide by an explicit code of conduct and standards of research performance, who hold a graduate degree in archaeology, anthropology, art history, classics, history, or another germane discipline and who have substantial practical experience. Registration is a voluntary act that recognizes an individual's personal responsibility to be held accountable for their professional behavior. By formally acknowledging this relationship between personal actions and the wider discipline of archaeology, the act of registration is truly what sets the professional archaeologist apart from all others who are involved with or interested in archaeology.

Established in 1998, the Register provides the mechanism for the easy identification of Registered Professional Archaeologists (RPA). RPAs are listed in a directory, published annually, and updated quarterly on the Register's Web site at www.rpanet.org. RPAs may also identify themselves by displaying a registration certificate or by the abbreviation RPA after their names.

A hallmark of the Register of Professional Archaeologists is a formal grievance procedure that allows for the investigation of complaints about the professional conduct of an RPA. If an allegation of a violation of the code or standards is supported during an investigation, sanctions, including termination of registration, can be given. Fair investigation and efforts at resolution through mediation always precede any formal proceedings.
GOALS

The establishment and acceptance of universal standards in archaeology is the fundamental goal of the Register of Professional Archaeologists. As a voluntary act, registration will only serve to improve our abilities to establish and maintain high standards of professional conduct when the majority of qualified archaeologists are RPAs. In order to achieve this goal, the Register and its sponsors are working to encourage registration. They are also working to obtain the endorsement of the Register by other national, regional, and local organizations, as well as by organizations that serve a review, referral, or granting function.

SPONSORS

Unlike most other archaeological organizations, the Register of Professional Archaeologists is not a membership society. It is focused solely on the promotion and maintenance of professional standards in archaeology and the registration of qualified archaeologists.

Recognizing the pervasive importance of this need, the Register was created by a joint task force of the Society of Professional Archaeologists, Society for American Archaeology, Society for Historical Archaeology, and the Archaeological Institute of America. Through a vote of its board and membership, SOPA voted to transfer its responsibility, authority, and assets to the Register and to enter into a dormant state.

The SHA, SAA, and AIA all voted to become sponsors of the Register. Sponsorship means that these scholarly organizations endorse the mission of the Register, encourage their qualified members to register, and provide annual financial support.

RPA Code of Conduct

Archaeology is a profession, and the privilege of professional practice requires professional morality and professional responsibility, as well as professional competence, on the part of each practitioner.

1. The Archaeologist's Responsibility to the Public

1.1 An archaeologist shall:

a. Recognize a commitment to represent Archaeology and its research results to the public in a responsible manner;

b. Actively support conservation of the archaeological resource base;

c. Be sensitive to, and respect the legitimate concerns of, groups whose culture histories are the subjects of archaeological investigations;
d. Avoid and discourage exaggerated, misleading, or unwarranted statements about archaeological matters that might induce others to engage in unethical or illegal activity;

e. Support and comply with the terms of the UNESCO Convention on the means of prohibiting and preventing the illicit import, export, and transfer of ownership of cultural property, as adopted by the General Conference, 14 November 1970, Paris.

1.2 An archaeologist shall not:

f. Engage in any illegal or unethical conduct involving archaeological matters or knowingly permit the use of his/her name in support of any illegal or unethical activity involving archaeological matters;

g. Give a professional opinion, make a public report, or give legal testimony involving archaeological matters without being as thoroughly informed as might reasonably be expected;

h. Engage in conduct involving dishonesty, fraud, deceit or misrepresentation about archaeological matters;

i. Undertake any research that affects the archaeological resource base for which she/he is not qualified.

II. The Archaeologist's Responsibility to Colleagues, Employees, and Students

2.1 An archaeologist shall:

j. Give appropriate credit for work done by others;

k. Stay informed and knowledgeable about developments in her/his field or fields of specialization;

l. Accurately, and without undue delay, prepare and properly disseminate a description of research done and its results;

m. Communicate and cooperate with colleagues having common professional interests;

n. Give due respect to colleagues' interests in, and rights to, information about sites, areas, collections, or data where there is a mutual active or potentially active research concern;

o. Know and comply with all federal, state, and local laws, ordinances, and regulations applicable to her/his archaeological research and activities;

p. Report knowledge of violations of this Code to proper authorities.

q. Honor and comply with the spirit and letter of the Register of Professional Archaeologist's Disciplinary Procedures.

2.2 An archaeologist shall not:

r. Falsely or maliciously attempt to injure the reputation of another archaeologist;

s. Commit plagiarism in oral or written communication;
t. Undertake research that affects the archaeological resource base unless reasonably prompt, appropriate analysis and reporting can be expected;
u. Refuse a reasonable request from a qualified colleague for research data;
v. Submit a false or misleading application for registration by the Register of Professional Archaeologists.

III. The Archaeologist’s Responsibility to Employers and Clients

3.1 An archaeologist shall:

w. Respect the interests of her/his employer or client, so far as is consistent with the public welfare and this Code and Standards;
x. Refuse to comply with any request or demand of an employer or client which conflicts with the Code and Standards;
y. Recommend to employers or clients the employment of other archaeologists or other expert consultants upon encountering archaeological problems beyond her/his own competence;
z. Exercise reasonable care to prevent her/his employees, colleagues, associates and others whose services are utilized by her/him from revealing or using confidential information. Confidential information means information of a non-archaeological nature gained in the course of employment which the employer or client has requested be held inviolate, or the disclosure of which would be embarrassing or would be likely to be detrimental to the employer or client. Information ceases to be confidential when the employer or client so indicates or when such information becomes publicly known.

3.2 An archaeologist shall not:

aa. Reveal confidential information, unless required by law;
bb. Use confidential information to the disadvantage of the client or employer;
cc. Use confidential information for the advantage of herself/himself or a third person, unless the client consents after full disclosure;
dd. Accept compensation or anything of value for recommending the employment of another archaeologist or other person, unless such compensation or thing of value is fully disclosed to the potential employer or client;
e. Recommend or participate in any research which does not comply with the requirements of the Standards of Research Performance.

RPA Standards of Research Performance

The research archaeologist has a responsibility to attempt to design and conduct projects that will add to our understanding of past cultures and/or that will develop better theories, methods, or techniques for interpreting the archaeological record, while
causing minimal attrition of the archaeological resource base. In the conduct of a research project, the following minimum standards should be followed:

I. The archaeologist has a responsibility to prepare adequately for any research project, whether or not in the field. The archaeologist must:

1.1 Assess the adequacy of her/his qualifications for the demands of the project, and minimize inadequacies by acquiring additional expertise, by bringing in associates with the needed qualifications, or by modifying the scope of the project;

1.2 Inform herself/himself of relevant previous research;

1.3 Develop a scientific plan of research which specifies the objectives of the project, takes into account previous relevant research, employs a suitable methodology, and provides for economical use of the resource base (whether such base consists of an excavation site or of specimens) consistent with the objectives of the project;

1.4 Ensure the availability of adequate and competent staff and support facilities to carry the project to completion, and of adequate curatorial facilities for specimens and records;

1.5 Comply with all legal requirements, including, without limitation, obtaining all necessary governmental permits and necessary permission from landowners or other persons;

1.6 Determine whether the project is likely to interfere with the program or projects of other scholars and, if there is such a likelihood, initiate negotiations to minimize such interference.

II. In conducting research, the archaeologist must follow her/his scientific plan of research, except to the extent that unforeseen circumstances warrant its modification.

III. Procedures for field survey or excavation must meet the following minimal standards:

3.1 If specimens are collected, a system for identifying and recording their proveniences must be maintained.

3.2 Uncollected entities such as environmental or cultural features, depositional strata, and the like, must be fully and accurately recorded by appropriate means, and their location recorded.

3.3 The methods employed in data collection must be fully and accurately described. Significant stratigraphic and/or associational relationships among artifacts, other
specimens, and cultural and environmental features must also be fully and accurately recorded.

3.4 All records should be intelligible to other archaeologists. If terms lacking commonly held referents are used, they should be clearly defined.

3.5 Insofar as possible, the interests of other researchers should be considered. For example, upper levels of a site should be scientifically excavated and recorded whenever feasible, even if the focus of the project is on underlying levels.

IV. During accessioning, analysis, and storage of specimens and records in the laboratory, the archaeologist must take precautions to ensure that correlations between the specimens and the field records are maintained, so that provenience contextual relationships and the like are not confused or obscured.

V. Specimens and research records resulting from a project must be deposited at an institution with permanent curatorial facilities, unless otherwise required by law.

VI. The archaeologist has responsibility for appropriate dissemination of the results of her/his research to the appropriate constituencies with reasonable dispatch.

6.1 Results reviewed as significant contributions to substantive knowledge of the past or to advancements in theory, method or technique should be disseminated to colleagues and other interested persons by appropriate means such as publications, reports at professional meetings, or letters to colleagues.

6.2 Requests from qualified colleagues for information on research results directly should be honored, if consistent with the researcher's prior rights to publication and with her/his other professional responsibilities.

6.3 Failure to complete a full scholarly report within 10 years after completion of a field project shall be construed as a waiver of an archaeologist's right of primacy with respect to analysis and publication of the data. Upon expiration of such 10-year period, or at such earlier time as the archaeologist shall determine not to publish the results, such data should be made fully accessible to other archaeologists for analysis and publication.

6.4 While contractual obligations in reporting must be respected, archaeologists should not enter into a contract which prohibits the archaeologist from including her or his own interpretations or conclusions in the contractual reports, or from a continuing right to use the data after completion of the project.

6.5 Archaeologists have an obligation to accede to reasonable requests for information from the news media.
Main Office:
The Archaeological Conservancy
Mark Michels, President
5301 Central Avenue NE, Suite 1218
Albuquerque, NM 87108-1517
(505) 266-1540

California Office:
The Archaeological Conservancy
Gene Hurych
1 Shoal Court, #67
Sacramento, CA 95831
(916) 399-1193

What is The Archaeological Conservancy?
The Archaeological Conservancy, established in 1980, is the only national non-profit organization dedicated to acquiring and preserving the best of our nation's remaining archaeological sites. Based in Albuquerque, New Mexico, the Conservancy also operates regional offices in Georgia, Virginia, Ohio, and California.

Every day, prehistoric and historic archaeological sites in the United States are lost forever—along with the precious information they contain. Modern-day looters use backhoes and bulldozers to recover artifacts for the international market. Urban development and agricultural methods such as land leveling and topsoil mining destroy ancient sites. The Conservancy protects these sites by acquiring the land on which they rest, preserving them for posterity.

Why save archaeological sites?
The ancient people of North America made no written records of their cultures. For us to gain an understanding of what happened here before Columbus, Coronado, and Raleigh, we rely on clues left behind by these early Americans in the remains of their villages, monuments, and artifacts.

Over the past few decades, the knowledge and methods of modern archaeologists have advanced tremendously. Today researchers use technologies such as tree-ring dating, radiocarbon dating, archaeomagnetic dating, obsidian hydration dating, pollen analysis, and trace-element analysis to glean information from the archaeological record. Few of these technologies existed 50 years ago. For this reason, it's important that we keep a significant portion of raw data in the ground, where future archaeologists with even more advanced knowledge and technologies will have access to it.

Archaeologists still lack the clues that might someday solve the mysteries of the early Americans. By permanently preserving important cultural sites, the Conservancy makes sure they will be available for our children and grandchildren to study and enjoy.
What sites does the Conservancy own?

Since its beginning in 1980, the Conservancy has acquired more than 285 endangered sites in 38 states across America. These preserves range in size from a few acres to more than 1,000 acres. They include the earliest habitation sites in North America, a 19th-century frontier army post, and nearly every major cultural period in between.

Examples of Conservancy preserves include California's Borax Lake site, which encompasses 11,000 years of human occupation; the first mission of Father Kino, as well as several important Sinagua and Hohokam ruins in Arizona; important Caddo Indian sites in Texas and Oklahoma; and in Georgia, key cultural locales of the region's first Indians.

And the list goes on: several ancient Indian villages in Florida; Mississippian sites in Arkansas and Missouri, at least two of which Hernando de Soto visited in 1541; villages of the eastern lakeshore peoples in Michigan; ancestral sites of New Mexico's Pueblo people; in Colorado, Yellowjacket and Mud Springs Pueblos--the two largest ruins of the Mesa Verde culture; and in the Northeast, two Paleo-Indian sites and a Seneca Iroquois village.

Some Conservancy sites have been incorporated into public parks such as Petrified Forest National Park in Arizona, Chaco Culture National Historical Park in New Mexico, Parkin Archeological State Park in Arkansas, and Hopewell Culture National Historical Park in Ohio.

How does the Conservancy raise funds?

Major funding for the Conservancy comes from its more than 23,000 members, as well as special individual contributions, corporations, and foundations. Income from a permanent Endowment Fund supplements regular fundraising. Often we raise money locally to purchase specific ruins in a certain community. In emergency situations, we borrow from our revolving Preservation Fund.
SOME USEFUL WEBSITES


CALIFORNIA LAWS, AGENCIES & CONTACTS

Bureau of Land Management (BLM), California Units & Programs:
http://www.ca.blm.gov/index.html

California Department of Parks and Recreation (DPR), Cultural Resources Division & Programs:
http://www.parks.ca.gov/default.asp?page_id=22491

California Department of Transportation (Caltrans), Native American Liaison Branch:
http://www.dot.ca.gov/hq/tpp/offices/orip/na/native_american.htm

California Environmental Quality Act (CEQA): http://ceres.ca.gov/topic/env_law/ceqa/

California Historical Resources Information System (CHRIS):
http://ohp.parks.ca.gov/default.asp?page_id=1068

California Indian Legal Services (CILS): http://www.calindian.org

California Legislative Updates: http://leginfo.ca.gov/index.html

California Native American Heritage Commission (NAHC): http://www.nahc.ca.gov/

California Office of Historic Preservation (OHP): http://ohp.parks.ca.gov/

NAGPRA (Federal): http://www.cr.nps.gov/nagpra/

Society for California Archaeology (SCA): http://www.scanet.org

USDA Forest Service (USFS), Region 5: http://www.r5.fs.fed.us/
Elected Officials in Washington, D.C.

The White House

The White House: http://www.whitehouse.gov/

Executive Orders by President Bush: http://www.whitehouse.gov/news/orders/

The Senate

The Senate: http://www.senate.gov/index.htm

The Senate Calendar:
http://www.senate.gov/pagelayout/legislative/one_item_and_teasers/2004_schedule.htm

The House of Representatives:

The House of Representatives: http://www.house.gov/


House Native American Caucus: http://www.house.gov/kildee/native_american_ca.htm

Committees of the House of Representatives http://thomas.loc.gov/home/hcomso.html

Members of the House of Representatives' Offices:
http://www.house.gov/house/MemberWWW.html


Legislative Process in the House of Representatives:
http://www.house.gov/house/Legproc.html


Senate Directory
http://www.senate.gov/general/contact_information/senators_cfm.cfm

Committees of the Senate: http://thomas.loc.gov/home/sencom.html

Legislative Process in the Senate http://thomas.loc.gov/home/enactment/enactlawtoc.html

Some Useful Web Sites
Visiting D.C. and the Senate
http://www.senate.gov/pagelayout/visiting/a_three_sections_with_teasers/visitors_home.htm

Senate Committee Hearing Schedule
http://www.senate.gov/pagelayout/committees/b_three_sections_with_teasers/committee_hearings.htm

FEDERAL Government Documents and Resources

U.S. Code
http://uscode.house.gov/
The Office of the Law Revision Counsel prepares and publishes the United States Code, which is a consolidation and codification by subject matter of the general and permanent laws of the United States.

Code of Federal Regulations (CFR)
http://www.gpoaccess.gov/cfr/index.html
The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. It is divided into 50 titles that represent broad areas subject to Federal regulation. Each volume of the CFR is updated once each calendar year and is issued on a quarterly basis.

List of CFR Sections Affected (LSA)
http://www.gpoaccess.gov/lsa/index.html
The List of CFR Sections Affected lists proposed, new, and amended Federal regulations that have been published in the Federal Register since the most recent revision date of a CFR title. Each LSA issue is cumulative and contains the CFR part and section numbers, a description of its status (e.g., amended, confirmed, revised), and the Federal Register page number where the change(s) may be found. It is published by the Office of the Federal Register, National Archives and Records Administration.

Congressional Record
http://www.gpoaccess.gov/crecord/index.html
The Congressional Record is the official record of the proceedings and debates of the United States Congress. It is published daily when Congress is in session. GPO Access contains Congressional Record volumes from 140 (1994) to the present. At the back of each daily issue is the "Daily Digest," which summarizes the day's floor and committee activities.

The current year's Congressional Record database is usually updated daily by 11 a.m., except when a late adjournment delays production of the issue. Documents are available as ASCII text and Adobe Portable Document Format (PDF) files.

Government Printing Office
http://www.gpoaccess.gov/index.html
The U.S. Government Printing Office disseminates official information from all three branches of the Federal Government.

Some Useful Web Sites
Federal Register
http://www.gpoaccess.gov/fr/index.html
Published by the Office of the Federal Register, National Archives and Records Administration (NARA), the Federal Register is the official daily publication for rules, proposed rules, and notices of Federal agencies and organizations, as well as executive orders and other presidential documents.

U.S. Government On-line Bookstore
http://bookstore.gpo.gov/

http://www.gpoaccess.gov/gmanual/index.html
As the official handbook of the Federal Government, the United States Government Manual provides comprehensive information on the agencies of the legislative, judicial, and executive branches. It also includes information on quasi-official agencies, international organizations in which the United States participates, and boards, commissions, and committees. The Manual begins with reprints of the Declaration of Independence and the U.S. Constitution. The new edition of the Manual is available annually in late summer.

Regulation.Gov
http://www.regulations.gov/
Find, review, and submit comments on Federal rules open for comment. On this site, you can find, review, and submit comments on Federal documents that are open for comment and published in the Federal Register, the Government's legal newspaper. As a member of the public, you can submit comments about these regulations, and have the Government take your views into account.

State Resources
http://thomas.loc.gov/home/state.htm
Includes State homepages, other jurisdiction homepages, i.e., American Samoa; and other resources, i.e., State Agencies.

Reference Documents

Federal Historic Preservation Laws, Regulations and Standards:
http://www.cr.nps.gov/linklaws.htm

National Historic Preservation Act of 1966, As Amended
www.achp.gov/nhpa.html

Section 106 User's Guide
www.achp.gov/usersguide.html
ACHP Case Digest—Protecting Historic Properties:
Section 106 in Action
www.achp.gov/casedigest.html

Federal Historic Preservation Case Law, 1966-2000
www.achp.gov/pubs-caselaw.html

Protecting Historic Properties: A Citizen’s Guide to Section 106 Review
www.achp.gov/pubs-citizensguide.html

ACHP Staff Directory
www.achp.gov/staff.html

How to Apply the National Register Criteria for Evaluation
www.cr.nps.gov/nr/publications/bulletins/nrb15

National Park Service "Links to the Past" Publications
www.cr.nps.gov/linkpubs.htm

National Park Service Preservation Briefs
www2.cr.nps.gov/tps/briefs/presbhom.htm

National Register Publications
www.cr.nps.gov/nr/publications

Secretary of the Interior’s Standards for the
Treatment of Historic Properties: 36 CFR Part 68
archnet.asu.edu/archnet/topical/crm/usdocs/36cfr68.html

Secretary of the Interior’s Standards for Rehabilitation
www2.cr.nps.gov/tps/tax/rehabstandards.htm

Secretary of the Interior’s Standards and Guidelines for
Archeology and Historic Preservation
www.cr.nps.gov/local-law/arch_stnds_0.htm

FEDERAL PROGRAM WEB SITES

Advisory Council on Historic Preservation (ACHP)
www.achp.gov

National Register of Historic Places (NRHP)
www.cr.nps.gov/nr

National Park Service Tribal Preservation Program
www.cr.nps.gov/hps/tribal/tribal_p.htm
Native American Graves Protection and Repatriation Act (NAGPRA) National Program
www.cr.nps.gov/nagpra/

National Center for Preservation Technology and Training (NCPTT)
www.ncptt.nps.gov

National Center for Preservation Technology and Training
Clearinghouse for Preservation Internet Resources
http://www.ncptt.nps.gov/pir/

National Conference of State Historic Preservation Officers (NCSHPO)
www.ncshpo.org

National Association of Tribal Historic Preservation Officers (NATHPO)
www.nathpo.org

National Trust for Historic Preservation
www.nthp.org

SOCIETIES AND ORGANIZATIONS

American Anthropological Association (AAA), Archaeology Section. Suite 640, 4350 North Fairfax Drive, Arlington, VA 22203-1621 (http://www.ameranthassn.org/).

American Cultural Resources Association (ACRA): http://www.acra-crm.org

The Archaeological Conservancy. 5301 Central Ave. NE, Suite 1218, Albuquerque, NM 87108-1517 (http://www.gorp.com/archcons/).

Archaeological Institute of America. 656 Beacon Street, Boston, MA 02215-2010 (http://www.archaeological.org/).

California Archaeological Site Stewardship Program (CASSP): http://cassp.org

California Indian Basketweavers Association (CIBA): http://ciba.org/

National Preservation Institute. www.npi.org

National Trust for Historic Preservation. 1785 Massachusetts Ave, NW, Washington D.C. 20036; (http://www.nthp.org/).

Native American Journalists Association http://www.naja.com

Society for Archaeological Sciences. Office of the General Secretary, SAS, Department of Anthropology, University of California, Riverside, CA 92521 (http://www.wisc.edu/larch/sas/sas.htm).

Society for California Archaeology (SCA). SCA Business Office, Department of Anthropology, California State University, Chico, Chico, CA 95929-0401, (530) 898-5733, fax (530) 898-4220 (scaoffice@csuchico.edu website at www.scahome.org)

Society for Historical Archaeology. P. O. Box 30446, Tucson, AZ 85751-0446; (http://www.sha.org/).

Society of Professional Archeologists (SOPA) has become the Register of Professional Archaeologists (RPA) (http://www.rpanet.org)

Numerous other archaeological societies and newsletters can be found in the "Directory of Archaeological Societies and Newsletters" by Smoke Pfeiffer (http://www.serv.net/~mallard/hr/archsoc.html).

SERVICES

Archaeology jobs and field schools: http://archaeologyfieldwork.com

Archaeology library: http://archnet.uconn.edu

American Indian and Alaska Native Tourism Association
http://www.aianta.org/

Indianz.com -- news service
http://www.Indianz.com

National Atlas (GIS)
http://www.nationalatlas.gov

Tiger Map Service (GIS) -- Detailed maps of anywhere in the U.S. using public geographic data http://www.census.gov/geo/www/tiger/tigermap.html

TopoZone.com -- topographical map service
http://www.topozone.com/

US Department of Interior Phone search
http://www.doi.gov/doiphone.html

USGS Map Service
http://www.gisdatadepot.com/
WEB RESOURCE GUIDES

Several comprehensive guides to internet resources of interest are now available:

- Ancient World Web by Julia Hayden lists resources of interest to classical archaeologists and prehistorians (http://www.julen.net/aw/).
- Archaeology on the Net includes links to archaeology web sites and information on new books of interest to archaeologists (http://www.serve.com/archaeology/).
- ArchNet - The most extensive listing of web resources related to archaeology (http://archnet.uconn.edu/).
- The Atrium by David Meadows hosts the valuable "Ancient World on Television," "Commentarium" (links to news stories about archaeology), and the "Explorator" (an email list to keep you up-to-date on the latest finds) (http://web.idirect.com/~atrium/).
- Internet Resources for Heritage Conservation, Historic Preservation and Archaeology by Peter H. Stott (http://www.cr.nps.gov/ncptt/irg/).
- Jennifer's Archaeology Website by Jennifer Hutchey. (http://arch.hutchey.com/).
- Yahoo! Anthropology and Archaeology (http://www.yahoo.com/Social_Science/Anthropology_and_Archaeology/).

The following world wide web servers provide additional information about archaeology or can link you to other archaeological resources on the web:

- Classics and Mediterranean Archaeology (http://rome.classics.lsa.umich.edu/welcome.html).
- Egyptology Resources (http://www.rcwton.cam.ac.uk/egypt).
- Exploring Ancient World Cultures (http://eawc.evansville.edu/).
- Fantastic Archaeology A thoughtful examination of outlandish claims (http://www.usd.edu/anth/cultarch/cultindex.html).
- LINKS to the Past (National Park Service) (http://www.nps.gov/crweb1/).
- Mining Company: Archaeology K. Kris Hirst is your guide to archaeological resources on the net (http://archaeology.miningco.com/).
- Seeking Sites Afar: Point of Reference by Wayne Neighbors has lots of current information on archaeological research (http://anthro.org/main.htm).
- Southwestern Archaeology (http://www.swanet.org/).
• U. K. Archaeology on the Internet (http://www.nottingham.ac.uk/~acz kdco/ukarch/ukindex.html).
• World-Wide Web Virtual Library: Museums. Mirror at Illinois State Museum; (http://www.museum.state.il.us/vlmp/).

MAGAZINES


Archaeology. Published bimonthly by the Archaeological Institute of America. Subscription Service, P. O. Box 420423, Palm Coast, FL 32142-0423, (800) 829-5122. $19.97/year for six issues (U. S. domestic rate; http://www.archaeology.org/).

Biblical Archaeologist. American School for Oriental Research, Membership/Subscriber Services, P. O. Box 15399, Atlanta, GA 30333-0399. $35/yr for four issues (U.S. domestic rate; http://www.asor.org/BA/BAHP.html).


Common Ground. Published by the National Park Service Departmental Consulting Archeologist and Archeological Assistance Program. Editor, NPS Archaeological Assistance Division, P. O. Box 37127, Washington, D. C. (http://www.nps.gov/aad/pubs.htm).

Current Archaeology. 9 Nassington Road, London NW3 2TX, UK, (44) 171 435-7517. $30/year for six issues (U.S. rate; http://www.archaeology.co.uk/).


Historic Preservation. Published by the National Trust for Historic Preservation. Membership Department, National Trust for Historic Preservation, 1785 Massachusetts Ave., NW, Washington, D.C. 20036, (202) 673-4166. $20/year for six issues including a membership in the National Trust (U.S. domestic rate; http://www.nthp.org/).

Accession, Accession Number: The number assigned to artifacts or data for permanent storage and curation in a collections facility.

ACHP, Advisory Council, Council: Advisory Council on Historic Preservation, an independent Federal agency composed of 19 members, is charged with advising the President & Congress on historic preservation matters and administering the provisions of Section 106 of the National Historic Preservation Act.

Action: as defined by NEPA, all activities, undertakings, or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies. Examples include, but are not limited to: (a) actions intended to conserve listed species or their habitat; (b) the promulgation of regulations; (c) the granting of licenses, contracts, leases, easements, rights-of-way and permits; (d) grants-in-aid; and (e) actions directly or indirectly causing modifications to the land, water or air.

Alluvium: Sediment (gravel, sand, silt, etc.) deposited by a stream.

AIRFA: American Indian Religious Freedom Act of 1978, states that the policy of the United States is to protect and preserve for American Indians their inherent rights of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians. These rights include, but are not limited to, access to sites, use and possession of sacred objects, and the freedom to worship through ceremony and traditional rites.

Archaeological Site: the location of past focused human activities, defined in close proximity of a continuous distribution of artifacts and/or features.

ARPA: Archaeological Resources Protection Act of 1979, prohibits the removal, sale, receipt and interstate transportation of archaeological resources obtained illegally (without permits) from public or Indian lands and authorizes Federal agency permit procedures for investigations of archaeological resources on public lands under the agency's control. Amendments to ARPA state that the Secretaries of the Interior, Agriculture and Defense shall develop plans for surveying the lands under their control to determine the nature and extent of archaeological resources, prepare a schedule for surveying those lands that are likely to contain the most scientifically valuable archaeological resources, and develop documents for reporting suspected violations.

APE, Area of Potential Effects, as defined by the NHPA for the Section 106 review process, the area, or areas, within which an undertaking may cause changes in the character or use of historic properties, should any be present.

Artifact: An object showing human workmanship or modification.
**Assemblage:** The complete inventory of artifacts from a single, defined archaeological unit (such as a stratum or component).

**Associated Funerary Objects:** See Funerary Objects.

**Backdirt:** The soils excavated from test pits, typically used to refill them once excavations are terminated.

**BRM:** Bedrock mortar, a grinding hole manufactured in a natural rock outcrop and used for processing foods (e.g., acorns) and other materials by California Indians.

**Biface:** A “flaked-stone” tool that has been worked on both sides.

**Burden of Proof:** Assuming a prima facie case by a Tribe with standing, the burden is always upon the museum to overcome the presumption and show that a lawful right of possession was transferred when the item was first alienated from the Tribe. (Reference: NAPGRA)

**Burial:** Human remains disposed of by interment.

**CEQA:** California Environmental Quality Act of 1970, State legislation that requires all State and local agencies and governments to evaluate proposed activities which may significantly affect the environment, including cultural resources. Compliance may include preparation of a Negative Declaration or an Environmental Impact Report (EIR).

**Carbon-14 Dating:** A method for determining the age of organic material.

**Cheri:** A crypto-crystalline silicate rock type common to Northwest California and elsewhere, and used to manufacture flaked-stone tools.

**Chipping, Knapping:** Making stone tools by controlled flaking, either by percussion (e.g., using a cobble hammerstone), or by exerting pressure on the edge with a pointed tool (e.g., antler).

**CFR:** Code of Federal Regulations, the government-wide regulations that all Federal agencies must follow, CFRs have the force of law.

**Constituents:** All elements of an archaeological site (artifacts, dietary remains, features, etc.).

**Core:** A cobble or small rock from which flakes are removed to make smaller flaked-stone implements, or which is shaped into a tool by removal of flakes (“core tool”).

**Cultural patrimony:** objects that are sacred or otherwise significant to a tribe or group, and because of their nature, were not the private property of individuals in that group. A carving representing a god, or the medicine bundle of a clan would be examples (Reference: NAGPRA).

**CRMP:** Cultural Resources Management Plan, same as an Historic Preservation Plan (see HPP).
**Data Recovery:** The act of excavating an archaeological site with the intent of answering specific research questions, typically as a mitigation measure when the site cannot be preserved.

**Datum:** A stationary control point from which all cultural features and artifacts are mapped in the field and depicted on a Sketch Map.

**Debitage (aka Flake):** Stone refuse or debris produced during flaked-stone tool manufacture.

**EA:** *Environmental Assessment*, under *NEPA*, the document used to determine if an *Environmental Impact Statement* is required.

**EIR:** *Environmental Impact Report*, under *CEQA* a detailed statement of a project’s environmental effects and considerations to mitigate (reduce) those effects.

**EIS:** *Environmental Impact Statement*, under *NEPA*, a detailed statement of a project’s effects on the environment including cultural resources, and considerations to mitigate (reduce) those effects.

**Ethnography:** The study of a culture to obtain information on past and present lifeways.

**Excavation:** A systematic process of digging archaeological sites, removing the soil and observing the provenience (location) and context of the finds, and recording them in a three-dimensional way.

**Feature:** A large, complex manmade structure or object, or arrangement of associated artifacts that cannot be easily moved, such as a hearth, housepit, rock art panel, can dump or mining ditch.

**FONSI:** *Finding of No Significant Impact*, under *NEPA*, a document that describes the reasons a project will not have a significant effect on the environment including cultural resources.

**FR:** *Federal Register*, where the US Government publishes legal announcements.

**Fire-cracked rocks:** Burned rocks that are typically fractured and discolored during intense heating in a firehearth, typically found in archaeological midden deposits associated with Indian village or camp sites.

**Firehearth:** An archaeological feature containing ash, charcoal, burned rocks and/or other evidence of a fire kindled by a person.

**Funerary Objects:** Those objects which, as part of the death rite or ceremony of a culture, are objects reasonably believed to have been placed with the individual human remains at the time of death or later. Per NAGPRA, two definitions apply:

Associated funerary objects are objects that are in collections that are associated with human remains that are in the possession and/or control of federal agencies/institutions of higher learning.

Unassociated funerary objects are funerary objects that are in the possession and/or control of federal agencies/institutions of higher learning with no associated collections of human remains.
Good Faith: In order that repatriation not be stalled in an abundance of caution, any museum that repatriates an item in conformance with the law may not be later held accountable if a new group later shows a close cultural affiliation. (Reference: NAGPRA)

Handstone (aka Mano): A hand-sized loaf-shaped cobble used for grinding seeds, pigments, etc., on a millingstone (aka Metate) ("groundstone tools").

Historic property: any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Properties.

HPP: Historic Preservation Plan (sometimes referred to as a Cultural Resources Management Plan), a written document that describes how cultural resources will be identified, protected and managed, for example, the Federally owned and US Army managed Ft. Hunter Liggett Military Installation in the traditional Salinan heartland.

Housepit: a depression of any shape representing the former location of a partly subsurface (semisubterranean) structure such as a traditional Yurok family house or sweatlodge.

Indian Tribe: Any band, tribe, nation, or other organized group or community of Indians or Alaskan Village Corporations, recognized by the BIA. Native Hawaiian organizations are also included. (Reference: NAPGRA)

In Situ: "in place," a term applied to archaeological remains found in their original, undisturbed location or position.

Integrity: classification of a site that relates to the degree of disturbance.

Interested person: those individuals and organizations that are concerned with the effects of a particular undertaking on historic properties and are given opportunities to participate in the NHPA Section 106 process.

Lithic: of or pertaining to a stone (obsidian, chert, basalt, greywacke, etc.), as in lithic artifacts.

Midden: culturally altered soil that is artificially darkened and has a greasy feel, marking the location of intensive human occupation where artifacts and food remains were discarded, cooking fires were set and emptied, etc.

Mitigate: to lessen the adverse effects an undertaking may cause to significant environmental and cultural resources including historic properties, such as (a) limiting the magnitude of the action, (b) repairing, rehabilitating, or restoring the effected property, (c) recovering and recording data from cultural properties (for example, excavating an archaeological site) that may be destroyed or substantially altered, (d) avoiding the effect altogether by not taking an action, or part of an action, or by relocating the action, (e) reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action, and (f) compensating for effect by providing substitute resources or environments.

MOA: Memorandum of Agreement, resulting from Section 106 consultation, that states measures the Federal agency will take to avoid or reduce effects on historic properties as it carries out its
undertaking; the MOA is signed by the Federal agency official, the SHPO, and the Advisory Council and Interested Parties if participating. The MOA documents mutual agreements of facts, intentions, procedures, and parameters for future actions and matters of coordination. It shows how the needs of the federal agency, the needs and desires of the public including expressed Native American concerns, and the scientific/historical significance of the property have all been protected.

**MOU: Memorandum of Understanding**, documentation of mutually agreed parameters within which support agreements subject to compliance with NHPA Section 106 will be developed between and among Federal and State agencies, project proponents, and interested persons, where applicable.

**Mortar**: a stone or wooden bowl-like artifact in which seeds, berries, meat and other products were ground and pulverized with a pestle (“groundstone tools”). Mortars occur in bedrock outcrops (BRM) or as portable items (“portable mortars”). In some areas of California, a basket “hopper” was attached with asphaltum to the stone base in increase its capacity; the stone “hopper mortars” are generally show and may show traces of asphaltum when discovered in archaeological contexts.

**NAGPRA**: Native American Graves Protection and Repatriation Act of 1990, requires Federal agencies and federally sponsored museums to establish procedures for identifying Native American groups associated with cultural items on Federal lands, to inventory human remains and associated funerary objects in Federal possession, and to repatriate (return) such items upon request to affiliated groups. Also requires that any discoveries of cultural items covered by the Act shall be reported to the head of the Federal entity that shall notify the appropriate Native American tribe or organization.

**NEPA**: National Environmental Policy Act of 1969, states the policy of the Federal government is to preserve important historic, cultural and natural aspects of our national heritage and requires consideration of environmental concerns during project planning and execution. Requires Federal agencies to prepare an Environmental Impact Statement (EIS) for every major Federal action that affects the quality of the human environment, including both natural and cultural resources.

**NHPA**: National Historic Preservation Act of 1966, establishes historic preservation as a national policy and defines it as the protection, rehabilitation, restoration, and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering or culture. 1992 amendments address Native American participation and consultation in federal historic preservation programs.

**NRHP, National Register**: National Register of Historic Places, the Nation’s master inventory of known historic properties (those which meet the significance standards of the National Register), administered by the National Park Service, with listings of buildings, structures, sites, objects and districts that possess historic, architectural, engineering, archaeological, or cultural significance at the national, state or local levels.

**OHP**: Office of Historic Preservation (see also, SHPO)
**OPR**: Governor's Office of Planning and Research (CEQA Guidelines for Native American Consultation – SB 18)

**PA**: Programmatic Agreement, a formal agreement between agencies to modify and/or replace the NHPA Section 106 process for numerous undertakings in a program in accordance with the implementing regulations of Section 106 presented in 36 CFR 800.13; for example, a PA signed by the Army, SHPO, and the Advisory Council, with concurring signatures demonstrating participation by the Salinan Nation and several other interested persons, implemented the HPP for Ft. Hunter Liggett Military Installation, such that the cultural resources management programs described in that HPP were carried out by force of law, instead of the Army consulting under Section 106 for each individual undertaking.

**Pestle**: an elongated, often cylindrical stone used to pulverize food products and other materials in a mortar (groundstone tools).

**Preponderance of Evidence**: As defined by Barron’s Law Dictionary: general standard of proof in civil cases. “Evidence preponderates where it is more convincing to the trier [of fact] than the opposing evidence.” ... It thus refers to the proof which leads the trier of fact to find that the existence of the fact in issue is more probable than not. Compare reasonable doubt; clear and convincing. (Reference: NAPGRA)

**Prima Facie**: At first view, on its face, not requiring further support to establish existence, validity, credibility, etc. (Reference: NAGPRA)

**Principal Investigator (PI)**: The designated professional archaeologist or anthropologist who oversees and is responsible for all aspects of a study or cultural resources management action.

**Project Proponent**: The agency, property owner or developer who is sponsoring the project.

**Projectile Point**: A sharp tip (usually flaked-stone) affixed to the business end of a spear, lance, dart or arrow.

**Provenience**: The original location or source of an object.

**Repatriation**: The return of someone or something to its nation of origin (ref: NAGPRA).

**Right of Possession**: Possession obtained with the voluntary consent of an individual or group that had authority of alienation (reference NAPGRA and 25 USC3001(13)).

**Sacred Objects**: Ceremonial objects that are used by traditional Native American religious leaders for the practice of traditional Native American ceremonies. (Reference: NAGPRA)

**SECTION 106, NHPA**: National Historic Preservation Act, Section 106, requires Federal agencies to take into account the effects of their undertakings on historic properties and to afford the Advisory Council an opportunity to comment on such undertakings.

**SECTION 404, CWA**: Clean Water Act, Section 404
**SHPO:** State Historic Preservation Officer (see also, OHP), the official designated by the Governor of each state or territory who (among other duties) consults with Federal agencies during Section 106 review, administers the national historic preservation program at the State level, reviews National Register nominations, and maintains data files on historic properties that have been identified by not nominated to the National Register (in California, these are the various Information Centers of the California Historical Resources Inventory).

**Site (archaeological):** The location of past cultural activity, defined by a more-or-less continuous distribution of cultural materials (artifacts, features, etc.)

**Standing:** In order to make a claim the group must meet the definition of Indian tribe or the claim must be made by a lineal descendant, that is one who can relate an unbroken chain to the individual being claimed (reference: NAPGRA).

**Taking:** In order to avoid an unconstitutional taking under the Fifth Amendment, no repatriation that constitutes a taking is authorized by NAGPRA. As applied to NAGPRA, “taking” is defined as “…nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without compensation.”

**TCP:** Traditional Cultural Property, also called an Ethnographic Site, is a historic property eligible for inclusion in the National Register because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community.

**Temporal:** Groups of items (artifacts, features) that can be traced to a given point in time.

**THPO:** Tribal Heritage (Historic) Preservation Officer, the official designated by a Tribe who assumes all or part of the functions of the SHPO (see above) for Tribal (Reservation) lands under the authority of Section 101 (d)(2) of the National Historic Preservation Act, as amended in 1992.

**Transect:** A survey is often conducted by people walking a study area that has been mentally divided into subareas, in order to systematically locate artifacts exposed on the ground; a series of transects, or passes, are walked by one or more persons in a parallel fashion to examine an area in search of cultural resources.

**Undertaking:** Under NHPA, a Federal activity that is subject to Section 106 requirements. The term undertaking is intended to include any project, activity, or program—and any of its elements—that has the potential to have an effect on a historic property and that is under the direct or indirect jurisdiction of a Federal agency or is licensed or assisted by a Federal agency. Included are construction, rehabilitation, repair projects, demolition, planning, licenses, permits, loans, loan guarantees, grants, Federal property transfers, and many other Federal activities.

**Unassociated Funerary Objects:** see Funerary Objects.