

R. Peterson

**Revised Section
106 Regulations**

Effective June 17, 1999

ACHP**106**

ATTACHMENT

12B

Major Changes**Full Text of the
Revised Regulations****Regs Flow Chart****Flow Chart
Explanatory Material****Archeology
Guidance****Transition Questions
and Answers****Briefings Schedule****Recommended Approach for
Consultation on Recovery of
Significant Information from
Archaeological Sites**

Effective June 17, 1999

Agency: Advisory Council on Historic Preservation.**Action:** Notice of Guidance.Summary, Dates, Addresses, and Contact InformationSupplementary InformationBackgroundArchaeological Sites and Their TreatmentResolving Adverse Effects through Recovery of Significant
Informationfrom Archaeological SitesModel Memorandum of Agreement

Summary: In accordance with Secs. 800.5 and 800.6 of its revised regulations (36 CFR part 800, "Protection of Historic Properties," published today) implementing Section 106 of the National Historic Preservation Act of 1966, the Advisory Council on Historic Preservation is publishing a recommended approach for consultation by Federal agencies, State Historic Preservation Officers, Tribal Historic Preservation Officers, and others on the effects of Federal, federally-assisted, and federally-licensed or -permitted undertakings on archaeological sites. The Council has determined that issuance of this guidance is consistent with the Council's revised regulations. The full text of the guidance is reproduced under the Supplementary Information section of this notice.

Dates: This guidance is effective on June 17, 1999.

Addresses: Those wishing to comment on this guidance should direct such comments to: Executive Director, Advisory Council on Historic Preservation, Old Post Office Building, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004; Fax (202) 606-8647; e-mail achp@achp.gov.

For further information, contact: Ronald D. Anzalone, Assistant to the Executive Director, Advisory Council

on Historic Preservation, Old Post Office Building, 1100 Pennsylvania Ave., NW., # 809, Washington, DC 20004, (202) 606-8523.

Supplementary Information: The full text of the guidance, with the model Memorandum of Agreement, is reproduced below.

Background

Sections 800.5 and 800.6 of the Council's revised regulations, "Protection of Historic Properties" (36 CFR part 800) detail the process by which Federal agencies determine whether their undertakings will adversely affect historic properties, and if they will, how they are to consult to avoid, minimize, or mitigate the adverse effects in order to meet the requirements of Section 106 to "take into account" the effects of their undertakings on historic properties.

One such category of historic properties is comprised of prehistoric or historic archaeological resources. The National Register of Historic Places defines an archaeological site as "the place or places where the remnants of a past culture survive in a physical context that allows for the interpretation of these remains" (National Register Bulletin 36, "Guidelines for Evaluating and Registering Historical Archaeological Sites and Districts," 1993, p. 2). Such properties may meet criteria for inclusion in the National Register of Historic Places for a variety of reasons, not the least of which may be because "they have yielded, or may be likely to yield, information important to prehistory or history" (*National Register Criteria for Evaluation*, 36 CFR 60.4).

In the context of taking into account the effects of a proposed Federal or federally-assisted undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register, potential impacts to archaeological sites often need to be considered. Appropriate treatments for affected archaeological sites, or portions of archaeological sites, may include active preservation in place for future study or other use, recovery or partial recovery of archaeological data, public interpretive display, or any combination of these and other measures.

Archaeological Sites and Their Treatment

The nature and scope of treatments for such properties should be determined in consultation with other parties, but in the Council's experience they generally need to be guided by certain basic

principles:

- The pursuit of knowledge about the past is in the public interest.
- An archaeological site may have important values for living communities and cultural descendants in addition to its significance as a resource for learning about the past; its appropriate treatment depends on its research significance, weighed against these other public values.
- Not all information about the past is equally important; therefore, not all archaeological sites are equally important for research purposes.
- Methods for recovering information from archaeological sites, particularly large-scale excavation, are by their nature destructive. The site is destroyed as it is excavated. Therefore management of archaeological sites should be conducted in a spirit of stewardship for future generations, with full recognition of their non-renewable nature and their potential multiple uses and public values.
- Given the non-renewable nature of archaeological sites, it follows that if an archaeological site can be practically preserved in place for future study or other use, it usually should be (although there are exceptions). However, simple avoidance of a site is not the same as preservation.
- Recovery of significant archaeological information through controlled excavation and other scientific recording methods, as well as destruction without data recovery, may both be appropriate treatments for certain archaeological sites.
- Once a decision has been made to recover archaeological information through the naturally destructive methods of excavation, a research design and data recovery plan based on firm background data, sound planning, and accepted archaeological methods should be formulated and implemented. Data recovery and analysis should be accomplished in a thorough, efficient manner, using the most cost-effective techniques practicable. A responsible archaeological data recovery plan should provide for reporting and dissemination of results, as well as interpretation of what has been learned so that it is understandable and accessible to the public. Appropriate arrangements for curation of archaeological materials and records should be made. Adequate time and funds should be budgeted for fulfillment of the overall plan.
- Archaeological data recovery plans and their research designs should be grounded in and related to the priorities established in regional, state, and local historic preservation plans, the needs of land and resource managers, academic research interests, and other legitimate public interests.
- Human remains and funerary objects deserve respect and should be treated appropriately. The presence of human

remains in an archaeological site usually gives the site an added importance as a burial site or cemetery, and the values associated with burial sites need to be fully considered in the consultation process.

- Large-scale, long-term archaeological identification and management programs require careful consideration of management needs, appreciation for the range of archaeological values represented, periodic synthesis of research and other program results, and professional peer review and oversight.

Resolving Adverse Effects through Recovery of Significant Information from Archaeological Sites

Under 36 CFR 800.5, archaeological sites may be "adversely affected" when they are threatened with unavoidable physical destruction or damage. Based on the principles articulated above, the Council recommends that the following issues be considered and addressed when archaeological sites are so affected, and recovery of significant information from them through excavation and other scientific means is the most appropriate preservation outcome.

If this guidance is followed, it is highly unlikely that the Council would decide to enter the consultation process under 36 CFR 800.6 or raise objections to the proposed resolution of adverse effects in a given case, unless it is informed of serious problems by a consulting party or a member of the public.

1. The archaeological site should be significant and of value chiefly for the information on prehistory or history it is likely to yield through archaeological, historical, and scientific methods of information recovery, including archaeological excavation.
2. The archaeological site should not contain or be likely to contain human remains, associated or unassociated funerary objects, sacred objects, or items of cultural patrimony as those terms are defined by the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001).
3. The archaeological site should not have long-term preservation value, such as traditional cultural and religious importance to an Indian tribe or a Native Hawaiian organization.
4. The archaeological site should not possess special significance to another ethnic group or community that historically ascribes cultural or symbolic value to the site and would object to the site's excavation and removal of its contents.

5. The archaeological site should not be valuable for potential permanent in-situ display or public interpretation, although temporary public display and interpretation during the course of any excavations may be highly appropriate.
6. The Federal Agency Official should have prepared a data recovery plan with a research design in consultation with the SHPO/THPO and other stakeholders that is consistent with the *Secretary of the Interior's Standards for the Treatment of Historic Properties*, the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, and the *Advisory Council on Historic Preservation's Treatment of Archaeological Properties: A Handbook*. The plan should specify: (a) The results of previous research relevant to the project; (b) research problems or questions to be addressed with an explanation of their relevance and importance; (c) the field and laboratory analysis methods to be used with a justification of their cost-effectiveness and how they apply to this particular property and these research needs; (d) the methods to be used in artifact, data, and other records management; (e) explicit provisions for disseminating the research findings to professional peers in a timely manner; (f) arrangements for presenting what has been found and learned to the public, focusing particularly on the community or communities that may have interests in the results; (g) the curation of recovered materials and records resulting from the data recovery in accordance with 36 CFR part 79 (except in the case of unexpected discoveries that may need to be considered for repatriation pursuant to NAGPRA); and (h) procedures for evaluating and treating discoveries of unexpected remains or newly identified historic properties during the course of the project, including necessary consultation with other parties.
7. The Federal Agency Official should ensure that the data recovery plan is developed and will be implemented by or under the direct supervision of a person, or persons, meeting at a minimum the *Secretary of the Interior's Professional Qualifications Standards* (48 FR 44738- 44739).
8. The Federal Agency Official should ensure that adequate time and money to carry out all aspects of the plan are provided, and should ensure that all parties consulted in the development of the plan are kept informed of the status of its implementation.
9. The Federal Agency Official should ensure that a final archaeological report resulting from the data recovery will be provided to the SHPO/THPO. The Federal Agency Official should ensure that the final report is responsive to professional standards, and to the Department of the Interior's *Format Standards for Final Reports of Data Recovery Programs* (42 FR 5377-79).

10. Large, unusual, or complex projects should provide for special oversight, including professional peer review.
11. The Federal Agency Official should determine that there are no unresolved issues concerning the recovery of significant information with any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to the affected property.
12. Federal Agency Officials should incorporate the terms and conditions of this recommended approach into a Memorandum of Agreement or Programmatic Agreement, file a copy with the Council per Sec. 800.6(b)(iv), and implement the agreed plan. The agency should retain a copy of the agreement and supporting documentation in the project files.

Model Memorandum of Agreement

MEMORANDUM OF AGREEMENT FOR RECOVERY OF SIGNIFICANT INFORMATION

FROM ARCHAEOLOGICAL SITE(S)

(list)

UNDERTAKING:

STATE:

AGENCY:

Whereas, in accordance with 36 CFR Part 800, the [Federal Agency] acknowledges and accepts the advice and conditions outlined in the Council's "Recommended Approach for Consultation on the Recovery of Significant Information from Archaeological Sites," published in the Federal Register on [date of publication]; and

Whereas, the consulting parties agree that recovery of significant information from the archaeological site(s) listed above may be done in accordance with the published guidance; and

Whereas, the consulting parties agree that it is in the public interest to expand funds to implement this project through the recovery of significant information from archaeological sites to mitigate the adverse effects of the project; and

Whereas, the consulting parties agree that Indian Tribes or Native Hawaiian organizations that may attach religious or cultural importance to the affected property(ies) have been consulted and have raised no objection to the work proposed; and

Whereas, to the best of our knowledge and belief, no human remains, associated or unassociated funerary objects or sacred

objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), are expected to be encountered in the archaeological work;

Now, therefore, the [Federal Agency] shall ensure that the following terms and conditions, including the appended Archaeological Data Recovery Plan, will be implemented in a timely manner and with adequate resources in compliance with the National Historic Preservation Act of 1966 (16 U.S.C. 470).

OTHER TERMS AND CONDITIONS:

- Modification, amendment, or termination of this agreement as necessary shall be accomplished by the signatories in the same manner as the original agreement.
- Disputes regarding the completion of the terms of this agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, any one of the signatories may request the participation of the Council to assist in resolving the dispute.
- This agreement shall be null and void if its terms are not carried out within 5 (five) years from the date of its execution, unless the signatories agree in writing to an extension for carrying out its terms.

Agency Official:

date:

State Historic Preservation Officer:

date:

Tribal Historic Preservation Officer: Official:

date:

Other Public or Private Entity:

date:

(as applicable)

[Attach Archaeological Data Recovery Plan here]

Dated: May 7, 1999.

John M. Fowler,
Executive Director.

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