United States
Environmental Protection
Agency

Advisory Control
On Historic
Preservation

National Council Of
State Historic Preservation
Officers

(A-104) (WH-547) 20E-4001

EPA

Programmatic Agreement On Historic Preservation for the State Revolving Fund

Printed on Recycled Paper

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Programmatic Agreement *

(EPA) PW-95934563-0
90004

PROGRAMMATIC AGREEMENT
AMONG
THE ENVIRONMENTAL PROTECTION AGENCY,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION, AND
THE NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS
CONCERNING COMPLIANCE WITH
THE NATIONAL HISTORIC PRESERVATION ACT
UNDER
EPA's STATE WATER POLLUTION CONTROL REVOLVING FUND PROGRAM

WHEREAS, the U.S. Environmental Protection Agency (EPA) awards capitalization grants to States to establish State Revolving Fund (SRF) programs within State Agencies (each hereinafter referred to as "SRF Agency") authorized under the Clean Water Act (CWA) (33 U.S.C. 1251 et. seq., as amended); and

WHEREAS, the EPA has issued Initial Guidance for the SRF program (January 1988), Appendix D of which (Attachment 1) contains criteria for approval of State Environmental Review Processes (SERPs); and

WHEREAS, Sections 106 and 110(b), (d) and (f) of the National Historic Preservation Act (NHPA) (16 U.S.C. 470f and 470h-2(b), (d), and (f)) apply to all SRF assistance directly made available to States by federal capitalization grants (EPA federal assistance); and

WHEREAS, projects carried out with EPA federal assistance may have effects on properties included in, or eligible for inclusion in, the National Register of Historic Places (historic properties); and

WHEREAS, the EPA has consulted with the Advisory Council on Historic Preservation (Council) and the National Conference of State Historic Preservation Officers (NCSHPO) pursuant to Section 800.13 of the regulations (36 CFR Part 800, et seq.) implementing Sections 106 and 110(f) of the NHPA;

NOW, THEREFORE, the EPA, the Council, and the NCSHPO agree that the SRF program shall be administered in accordance with the following stipulations, which will be deemed to satisfy EPA's Section 106 and 110(f) responsibilities for all EPA SRF program actions and SRF Agency program actions undertaken with EPA federal assistance.

Stipulations

EPA will ensure that the following measures are carried out:

1. Purpose and Applicability.

(a) This Programmatic Agreement [PA] sets forth the process by which EPA will meet its responsibilities under Sections 106 and 110(d) and 110(f) of the NHPA with the assistance of SRF agencies. As such, it sets forth the basis for SRF Agency review of individual projects that may affect historic properties, and establishes how EPA will be involved in such review.

(b) This PA is applicable to the review of CWA Section 212 (wastewater treatment facilities), 319 (non-point source pollution control) and 320 (estuary protection) projects that receive EPA federal assistance under an SRF Agency's program.

2. Responsibilities of EPA and SRF Agencies.

In compliance with its responsibilities under the NHPA and as a condition of its award of any capitalization grant to a State, EPA shall require that the SRF Agency or another designated State agency carry out the requirements of 36 CFR 800.4 through 800.6, with reference to 36 CFR 800.1, 800.2, 800.3, 800.8, 800.9, 800.10, 800.11, 800.12 and 800.14 (see 36 CFR Part 800, Attachment 2) and applicable Council standards and guidelines for all SRF Agency actions that receive EPA federal assistance. EPA will participate in the process to the extent mutually agreed upon by the EPA Regional Administrator and the SRF Agency, but at a minimum, EPA must be notified by the SRF Agency if after routine consultation or coordination with the State Historic Preservation Officer (SHPO) disputes remain pursuant to stipulation #5.

3. Use of SRF Certification Reviews and Annual Reviews.

(a) Certification reviews. EPA will review, or re-review as may be necessary, the certification each State is required to provide as a part of its initial application for SRF capitalization grant funding to ensure that:

(1) The State has the authority and capability to carry out the responsibilities assigned to the SRF Agency as described in this PA; and

(2) The SRF Agency will carry out such responsibilities.

(b) Programmatic coordination and consultation. Whenever an EPA Regional Administrator prepares for an annual review of an SRF Agency's program, the EPA Regional Administrator will afford the appropriate SHPO and the Council the opportunity to comment on their experiences with EPA's and the SRF Agency's execution of their respective responsibilities assigned under this PA and the SRF capitalization grant agreement, and shall consider such comments in the conduct of its annual review. If problems are reported with the execution of responsibilities under this PA, the EPA will consult with the SHPO or the Council and other interested persons if appropriate, and if mutually agreed that participation is necessary, the EPA will invite the SHPO or the Council to participate directly in the EPA's annual review on SRF program matters involving their jurisdiction or expertise.

(c) Annual reviews. (1) During each annual review of an SRF Agency's program, the EPA Regional Administrator will ensure that the SRF Agency is using:

(i) adequate expertise to carry out its responsibilities consistent with the professional qualifications standards found in the "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44738-9) (Attachment 3);

(ii) effective mechanisms for carrying out the responsibilities assigned to it under the capitalization grant agreement, in accordance with this PA, including those assigned pursuant to stipulation 2 above;

(iii) effective mechanisms for identifying historic properties subject to potential effect by SRF Agency actions using EPA federal assistance, taking into account the Council's publication: "Identification of Historic Properties: a Decisionmaking Guide for Managers" (1988) (Attachment 4);

(iv) effective procedures for involving interested parties and the public in the review process taking into account the

Council publication: "Public Participation in Section 106 Review: A Guide for Agency Officials" (1989) (Attachment 5); and

(v) effective mechanisms for avoiding, minimizing, or mitigating adverse effects on historic properties.

(2) The EPA will further ensure that deficiencies noted in carrying out of responsibilities under this PA and capitalization grant agreement (including any alternative review process contained in an approved SERP), as a result of oversight provided by the Council, SHPO and EPA's annual reviews, are remedied or effectively rebutted with appropriate documentation. Notification of deficiencies, suggested remedies affecting the work of the SRF Agency, and proposed EPA action (if any), shall be included in the report sent to the SRF Agency at the conclusion of an annual review. If the report identifies deficiencies, remedies or actions concerning NHPA compliance, a copy of those portions of the report will be sent to the appropriate SHPO and the Council.

4. State/SHPO Consultation/Coordination.

The Regional Administrator will ensure that a State's capitalization grant agreement provides consultation and coordination between the SRF Agency and the SHPO that is consistent with 36 CFR 800.4, 800.5, and 800.14, and with the guidance outlined in Attachment 6.

5. Dispute Resolution.

(a) Either the SRF Agency or the SHPO may, at its own discretion, request that the EPA Regional Office and/or the Council participate in the review of individual SRF projects or assist in resolving disputes that may arise between the two State agencies. The EPA and the Council will participate in reviewing and assisting the State agencies if so requested, and may participate at their own discretion, when significant issues are raised from other sources, without such a request.

(b) In situations where disagreements among the SRF Agency and SHPO cannot be resolved in consultation with either the EPA Regional Office or the Council, the EPA will be responsible for resolving the dispute in consultation with the Council in accordance with 36 CFR 800.4 through 800.6 as applicable.

6. Applicable Guidance.

(a) Implementation of this PA will be guided by Attachments 1 through 6 and such program guidance or regulations as EPA may

issue subsequently, and the applicable regulations, standards, guidelines and explanatory bulletins of the Council and the Department of the Interior.

(b) In consultation with SRF Agencies and the NCSHPO, the EPA and Council may from time to time jointly develop and provide SRF Agencies and SHPOs with additional guidance or training.

7. Distribution.

Following the Council's publication of the required notice of an approved PA in the Federal Register, EPA will distribute copies of this PA and its attachments to all EPA Regional SRF and National Environmental Policy Act (NEPA) Coordinators, SRF Agencies, SHPOs, and requesting parties.

8. Amendment.

Any party to this PA may request that it be amended, whereupon the parties will consult pursuant to 36 CFR 800.13 to consider such amendment.

9. Termination.

Any party to this PA may terminate it by providing ninety (90) days notice to the other parties, provided that the parties will consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the EPA will ensure compliance with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this PA.

Execution of this PA, and carrying out its terms, evidences that the EPA has satisfied its Section 106 and 110(f) responsibilities under the NHPA for Title VI of the CWA.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____ Date: March 19, 1990
Chairman

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____ Date: 3/23/90
Director, Office of Federal Activities

By: _____ Date: 3/23/90
Director, Office of Municipal Pollution Control

NATIONAL CONFERENCE OF STATE HISTORIC PRESERVATION OFFICERS

By: _____ Date: 3/28/90
President

Attachment 1

ATTACHMENT #1

federal register

Monday
March 19, 1990

Part III

Environmental Protection Agency

40 CFR Part 35

State Revolving Fund Program Implementation Regulations; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[FRL-3677-5]

RIN 2040-AB64

State Revolving Fund Program Implementation Regulations

AGENCY: Environmental Protection Agency.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements the State water pollution control revolving fund capitalization grant program. The program, under which the Environmental Protection Agency (EPA) awards grants to States to capitalize funds that will provide assistance for water pollution control purposes, was established in the Water Quality Act of 1987 as a new title VI to the Clean Water Act.

DATES: This interim rule is effective March 19, 1990. Comments must be received on or before May 18, 1990.

ADDRESSES: Comments may be mailed to Geoffrey Cooper, Office of Municipal Pollution Control (WH-546), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Geoffrey Cooper (202/382-2287).

SUPPLEMENTARY INFORMATION:

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I. Statutory Authority

This interim rule implements section 205(m) and title VI of the Federal Water Pollution Control Act (33 U.S.C. 1285(m) and 33 U.S.C. 1381-1387), which is commonly known as the Clean Water Act (the Act). Title VI was established in the Act by the Water Quality Act of 1987 (the Amendments; Pub. L. 100-4). Under section 501(a) of the Act, the Administrator of the Environmental Protection Agency (EPA) is authorized to "Prescribe such regulations as are necessary to carry out his functions under (the) Act." 33 U.S.C. 1361(a).

II. Purpose

Under the newly created title VI of the Clean Water Act, qualifying States will be awarded grants by the EPA to establish and capitalize State water pollution control revolving funds (SRFs). From these funds, the States may provide loans and other forms of assistance, but may not provide grants, for (1) wastewater treatment facility construction, (2) implementation of nonpoint source management programs, and (3) development and implementation of estuary conservation and management plans.

In developing this regulation to implement the provisions of title VI, EPA has attempted to identify all the major program requirements applicable to the SRF program. To that end, this regulation includes items required by the statute and those additional minimum program requirements that EPA considers necessary for effective program management. Administrative requirements applicable to all EPA assistance agreements are contained in EPA's general assistance regulations at 40 CFR part 31 and debarment and suspension regulations at 40 CFR part 32.

Note.—Previous drafts of these regulations, which have been informally reviewed by Agency and State personnel, began at 40 CFR 35.4000 and ended with 40 CFR 35.4080. Because the § 35.4000 series is already occupied, the numbering scheme has been changed. These regulations now begin at 40 CFR 35.3100 and end at 40 CFR 35.3170. Also, the numbering sequence, which in previous draft was divided by 10, is now divided by 5 to eliminate a level of subparagraphs.

III. The SRF Capitalization Grant Program of Title VI (40 CFR 35, Subpart K)

The new title VI of the Act authorizes EPA to award capitalization grants to States that have established SRFs that comply with the requirements of title VI. The States must also contribute to the capitalization of their SRFs by depositing State monies equaling at least 20 percent of each grant payment. From these funds the States may provide loans and other types of financial assistance, but may not provide grants, to local communities, intermunicipal, interstate and State agencies for the contribution of publicly owned wastewater treatment facilities, and to eligible recipients for implementation of the new nonpoint source pollution control program and for development and implementation of estuary protection plans.

Congress anticipated that most of the financial assistance provided by the SRFs would be in the form of loans. Loan repayments would then provide a continuing source of capital for States to make additional assistance available to localities and other eligible recipients for water pollution control facilities and programs.

The SRF capitalization grants program is fundamentally different from the established construction grants programs. In the construction grants program EPA awards grants directly to municipalities for the Federal share of eligible costs of treatment work construction. The program is Federally administered and most of the program activities are conducted by the States under delegation agreements. The Federal role in the capitalization grants program is limited to program-level grants-making and review. Each SRF is to be administered and operated by the State, with minimal Federal requirements imposed on its structure.

IV. SRF Program Implementation

At least three major objectives are apparent in the language and the legislative history of title VI. Congress devised the SRF capitalization grant program to enable States to quicken the pace of wastewater treatment facility construction in order to meet the enforceable requirements of the Clean Water Act, to increase the emphasis on nonpoint source pollution control and the protection of estuaries and to facilitate the establishment of permanent institutions in each State that would provide continuing sources of financing needed to maintain water quality. EPA intends to achieve these objectives by implementing the program pursuant to this rule.

Before this rule was promulgated, the SRF capitalization grant program was implemented in accordance with the requirements set forth in the Initial Guidance for State Revolving Funds. The Initial Guidance was signed by the Assistant Administrator for Water and January 28, 1988 and made available to the public by the Agency on February 2, 1988 (53 FR 2887). A supplementary memorandum to the Initial Guidance was signed by the Assistant Administrator for Water on September 30, 1988 and issued to the Agency's Regional offices and appropriate State agencies. Program requirements contained in these two documents are superseded by these regulations.

The Initial Guidance, the SRF Management Manual and other

memoranda such as periodic question and answer documents, and model agreements and reports, will provide guidance on SRF program implementation. State specific details regarding the operation of revolving loan fund programs will be developed between the States and EPA Regional Offices during the capitalization grant agreement process.

Shortly after enactment of the 1987 Amendments, the Agency convened a workgroup to prepare a Concept Paper outlining an approach to implementation of the new program. Regional personnel, personnel from other Federal agencies such as the Treasury Department, representatives of State environmental protection agencies and municipal interests participated on the workgroup preparing the Concept Paper and, later, the draft of the Initial Guidance. The Concept Paper was made available for public comment on April 8, 1987 (52 FR 12249). Through the late spring and early summer of 1987, the workgroup analyzed comments on this document and began preparing the draft Initial Guidance, which was also issued for public comment on September 4, 1987 (52 FR 33643).

The Agency then analyzed the public's response to the implementation approach reflected in the draft Initial Guidance Nearly half of the response were from the State agencies that will administer the program. Other respondents included municipalities and municipal interests, financial firms and engineers. Issues raised were resolved and incorporated in the final Initial Guidance, which forms the basis for these interim regulations. Several of the key provisions in the regulations are discussed below.

V. Major Matters in this Rule

A. Payments and cash draws (40 CFR 35.3155 and 40 CFR 35.3160)

The payments issue received the most attention throughout the development of the Initial Guidance. For each capitalization grant, the Agency will make payments by increasing the amount of funds available for cash draw in a letter of credit (LOC). These payments will be made quarterly according to a payment schedule negotiated between the Regional office and the State. The State will draw cash under the letter of credit according to rules applicable to each form of assistance.

By making grant amounts available in keeping with the State's binding commitments and by permitting cash draws from the LOC at the time construction costs or other eligible costs are incurred, the letter of credit mechanism will enable States to effectively operate SRF programs, and to use the fund for any purpose permitted by the Act, while enabling the Federal government to manage outlays efficiently.

With its first capitalization grant, the State must submit a schedule of estimated quarterly disbursements from the grant for the year following the grant award date. At the end of the third quarter of each Federal fiscal year thereafter, the State must submit a schedule of estimated quarterly disbursements for the following Federal fiscal year. If the State anticipates that actual quarterly disbursements may deviate significantly (by more than ten percent) from the estimated amounts, it must notify the Agency.

B. Refinancing (40 CFR 35.3120(b))

In addition to loans and other forms of assistance, title VI authorizes an SRF to refinance local "debt obligations incurred after March 7, 1985," the date on which the Water Quality Act was introduced in the Senate. The statutory language does not indicate whether a community must have commenced construction after that date as well. However, the legislative history of this provision indicates that Congress was seeking to spur construction of needed projects while title VI was being considered, and not to encourage communities to refinance construction that had been completed or that was underway on that date Therefore, an SRF may refinance debt where that debt was incurred and building began after March 7, 1985.

Projects that began between March 7, 1985 and the issuance of the Initial Guidance on January 28, 1988 must comply with the requirements of title VI in order to be eligible for refinancing. For example, if a State wishes to count the costs of refinancing a project toward satisfaction of title II requirements in section 602(b)(5), that project must have undergone an environmental review that conformed generally with the National Environmental Policy Act. Projects that began after the Initial Guidance was issued but before the effective date of this rule must comply with the statutory requirements and with any additional requirements in the Initial Guidance. Projects that begin after the effective date of this rule must meet all of its requirements.

C. State Match (40 CFR 35.3135(b))

The Act requires the State to deposit State monies in the SRF in an amount equaling at least 20 percent of each Federal grant payment. During development of the Initial Guidance, considerable discussion arose over whether the SRF itself could participate in acquiring the State's matching amount, or whether the match must be derived from traditional sources of revenues, such as annual legislative appropriations.

As provided for in the Initial Guidance, this rule permits States to issue bonds to acquire the match, and retire bonds with the interest earned by the Fund. Other proposed mechanisms by which the fund will participate in deriving the match must be reviewed on an individual basis to ensure that they do not impair the SRF's integrity and to demonstrate that the money is not derived from other Federal sources, unless specifically permitted by the Federal law under which it is available.

The rule also permits the State to provide its match in an LOC or other financial arrangement similar to the Federal LOC, provided that the State's proportional share is converted to cash when the Federal letter of credit is drawn upon.

D. "First Use" Requirements (40 CFR 35.3135(e))

Congress directed States to address certain projects needing construction to comply with the enforceable requirements of the Act, before SRF funds can be used for other eligible purposes. This requirement applies to the Federal grant, the State match and repayments of principal and payments of interest from the first round of loans issued from the Federal grant. Before these funds may be used for any purpose authorized by the Act, the State's National Municipal Policy major and minor treatment works must be maintaining progress toward compliance with the enforceable goals, deadlines and requirements of the Act.

This interpretation of section 602(b)(5) is consistent with the legislative history of the Act. The Conference Report to the 1987 Amendments explains that "funds as a result of capitalization grants" include the grant, the State match and the repayments of loans issued from the grant. The Act describes the projects that must comply with the enforceable requirements of the Act, including the municipal compliance deadline of July 1, 1988.

E. Environmental Review Requirements (40 CFR 35.3140)

Under section 602(b)(6), all section 212 publicly owned treatment works projects assisted with funds "directly made available by" capitalization grants, including activities conducted

under sections 319 and 320 that are also section 212 publicly owned treatment works, must undergo environmental reviews that are substantially similar to the reviews conducted in the title II program under the National Environmental Policy Act (NEPA). During development of the Initial Guidance, this matter emerged as one for which the Agency felt an additional program requirement was necessary.

This rule extends less detailed environmental review requirements to all section 212 projects funded from sources other than funds "directly made available by" capitalization grants. The statutory basis for imposing this requirement, which is in keeping with the Agency's mission, is section 602(b) of the Act. Section 602(a) authorizes the Administrator to include requirements in the capitalization grant agreement that are not specified in that section. Projects that are statutorily subject to review under section 602(b)(6) must undergo a State environmental review process that reflects the essential elements of NEPA. All other section 212 treatment works projects are subject to less detailed environmental review requirements.

F. Cross-cutting Authorities (40 CFR 35.3145)

There are a number of other Federal laws and directives that apply by their own terms to all projects or activities receiving Federal financial assistance, regardless of whether the statute authorizing the assistance makes them applicable. The Agency has determined that these "cross-cutting" authorities apply to SRF programs or projects assisted with funds "directly made available by" capitalization grants, which are funds equaling the amount of the Federal grant. The Agency has also determined that all activities of the State capitalization grant recipient (for example, the State's administration of the program) are subject to the Civil Rights Act, pursuant to the Civil Rights Restoration Act of 1988. A list of these cross-cutting authorities is attached as Appendix F of the Initial Guidance. Each capitalization grant agreement will contain a condition ensuring that the projects or activities assisted with funds "directly made available by" capitalization grants will comply with the cross-cutting authorities and that the State will notify the Regional Office when consultation or coordination with other Federal agencies is necessary to resolve compliance issues. The rule describes the extent to which cross-cutting authorities apply.

VI. Regulation Development

A. Regulatory Impact Analysis

This regulation has been reviewed under Executive Order 12291 and does not meet the criteria for a major regulation. This regulation will not result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or U.S. enterprises operating in foreign or domestic markets. Because this regulation is not a major rule, a Regulatory Impact Analysis is not required. This regulation has been submitted to the Office of Management and Budget for review under the Executive Order.

B. Regulatory Flexibility Act

EPA did not develop a regulatory flexibility analysis for this rule because grants regulations are not subject to the analytical requirements of sections 603 and 604 of the Regulatory Flexibility Act.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq., and has assigned OMB control number 2040-0118.

Public reporting burden for this collection is estimated to average 290 hours per response, including time for reviewing instructions, searching existing data, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2040-0118) Washington, D.C. 20503, marked "Attention, Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 35

Capitalization grants, State water pollution control revolving funds, Wastewater treatment.

William K. Reilly,

Administrator.

Date March 7, 1990.

For the reasons set forth in the preamble, the Environmental Protection Agency is amending 40 CFR part 35 by adding a new subpart K to read as follows:

PART 35—STATE AND LOCAL ASSISTANCE

Subpart K—State Water Pollution Control Revolving Funds

Sec.
35.3100 Policy and purpose.
35.3105 Definitions.
35.3110 Fund establishment.
35.3115 Eligible activities of the SRF.
35.3120 Authorized types of assistance.
35.3125 Limitations on SRF assistance.
35.3130 The capitalization grant agreement.
35.3135 Specific capitalization grant agreement requirements.
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35.3150 Intended Use Plan (IUP).
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35.3170 Corrective action.

Appendix A—Criteria for evaluating a State's proposed NEPA-like process

Subpart K—State Water Pollution Control Revolving Funds

Authority: Sections 205(m), 501(a) and title VI of the Clean Water Act, as amended, 33 U.S.C. 1285(m), 33 U.S.C. 1361(a), 33 U.S.C. 1381-1387.

§ 35.3100 Policy and purpose.

(a) The Agency intends to implement the State water pollution control revolving fund program in a manner that preserves for States a high degree of flexibility for operating their revolving funds in accordance with each State's unique needs and circumstances. The purpose of these regulations is to advance the general intent of title VI of the Clean Water Act, which is to ensure that each State's program is designed and operated to continue providing assistance for water pollution control activities in perpetuity.

(b) These regulations reflect statutory and program requirements that have been previously published in the Initial Guidance for State Revolving Funds, which was signed by the Assistant Administrator for Water on January 28, 1988, and the supplementary memorandum to the Initial Guidance for

State Revolving Funds, which was [illegible]d by the Assistant Administrator [illegible]ater on September 30, 1988. Copies of both documents can be obtained by writing the Office of Municipal Pollution Control (WH-546), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

(c) These regulations supplement title VI by codifying all major program requirements, applicable to the SRF program. EPA will not impose additional major program requirements without an opportunity for affected parties to comment. The process for amending this regulation to incorporate these requirements will begin within three months of their issuance.

§ 35.3105 Definitions.

Words and terms that are not defined below and that are used in this rule shall have the same meaning they are given in 40 CFR part 31 and 40 CFR part 35, subpart I.

(a) *Act.* The Federal Water Pollution Control Act, more commonly known as the Clean Water Act (Pub. L. 92-500), as amended by the Water Quality Act of 1987 (Pub. L. 100-4). 33 U.S.C. 1251 et seq.

(b) *Binding Commitment.* A legal obligation by the State to a local [illegible]ipient that defines the terms for [illegible]stance under the SRF.

(c) *Capitalization Grant.* The assistance agreement by which the EPA obligates and awards funds allotted to a State for purposes of capitalizing that State's revolving fund.

(d) *Cash draw.* The transfer of cash under a letter of credit (LOC) from the Federal Treasury into the State's SRF.

(e) *Disbursement.* The transfer of cash from an SRF to an assistance recipient.

(f) *Equivalency projects.* Those section 212 wastewater treatment projects constructed in whole or in part before October 1, 1994, with funds "directly made available by" the capitalization grant. These projects must comply with the requirements of section 602(b)(6) of the Act.

(g) *Funds "directly made available by" capitalization grants.* Funds equaling the amount of the grant.

(h) *Payment.* An action by the EPA to increase the amount of capitalization grant funds available for cash draw from an LOC.

(i) *SRF.* State water pollution control revolving fund.

§ 35.3110 Fund establishment.

(a) *Generally.* Before the Regional Administrator (RA) may award a [illegible]italization grant, the State must [illegible]ablish an SRF that complies with section 603 of the Act and this rule.

(b) *SRF accounts.* The SRF can be established within a multiple-purpose State financing program. However, the SRF must be a separate account or series of accounts that is dedicated solely to providing loans and other forms of financial assistance, but not grants.

(c) *SRF administration.* The SRF must be administered by an instrumentality of the State that is empowered to manage the Fund in accordance with the requirements of the Act. Where more than one agency of the State is involved in administering the activities of the State's program, the functions and the relationships of those agencies must be established to the satisfaction of the RA.

(d) *Documentation of the establishment of an SRF program.* (1) As part of its initial application for the capitalization grant, the State must furnish the RA with documentation of the establishment of an SRF and designation of the State instrumentality that will administer the SRF in accordance with the Act.

(2) With each capitalization grant application, the State's Attorney General (AG), or someone designated by the AG, must sign or concur in a certification that the State legislation establishing the SRF and the powers it confers are consistent with State law, and that the State may legally bind itself to the terms of the capitalization grant agreement.

(3) Where waiting for the AG's signature or concurrence would by itself significantly delay awarding the first grant (i.e., there are no other issues holding up the award), the head or chief legal officer of the State agency which has direct responsibility for administering the SRF program may sign the certification at the time of the capitalization grant award, provided the capitalization grant agreement contains a special condition requiring the State to submit the AG/designee's concurrence to EPA within a reasonable time, not to exceed 120 days, after the grant is awarded.

(e) *Allotment.* (1) Appropriations for fiscal years 1987 through 1990 under both title II and title VI programs will be allotted in accordance with the formula contained in section 205(c)(3) of the Act.

(2) Title VI funds are available for the Agency to obligate to the State during the fiscal year in which they are allotted and during the following fiscal year. The amount of any title VI allotment not obligated to the State at the end of this period of availability will be reallotted for title VI purposes in accordance with 40 CFR 35.2010.

(3) A State that does not receive grants that obligate all the funds allotted to it under title VI in the first year of its availability will not receive reallotted funds from that appropriation.

(4) Notwithstanding 40 CFR 35.910 and 40 CFR 35.2010(a), deobligations and reallotments of title II funds may be transferred to a title VI capitalization grant regardless of either the year in which the title II funds were originally allotted or the year in which they are deobligated or reallotted.

(f) *Transfer of title II allotments.* A State may exercise the option to transfer a portion of its title II allotment for deposit, through a capitalization grant, into an established water pollution control revolving fund, under section 205(m) of the Act.

(1) If the State elects this option, the Governor of the State must submit a Notice of Intent to the RA specifying the amount of the title II allotment the State intends to use for title VI purposes during the fiscal year for which it is submitted. The Notice may also identify anticipated, unobligated title II funds from the prior fiscal year, and request transfer of those funds as well.

(2) Each Notice of Intent must be submitted on or before July 3 of the year preceding the Federal fiscal year in which those funds are available. If a State fails to file a Notice of Intent on or before the prescribed date, then the State may not transfer title II allotments into an SRF in the upcoming fiscal year. A timely Notice of Intent may be later withdrawn or amended.

(3) When the capitalization grant is awarded, funds requested under section 205(m) of the Act will be obligated under title VI for the activities of the SRF. If a Notice of Intent anticipates transfer of funds under the authority of section 205(m), but those funds are not so obligated by the end of the two year period of availability, they will be subject to reallotment as construction grant funds.

(g) *Reserves and transferred allotments.* (1) Funds reserved under section 205(g) of the Act can be used to develop SRF programs. However, before any of these funds may be used for purposes of the SRF, the State must establish to the satisfaction of the RA that adequate funds, up to the section 205(g) maximum, will be available from any source to administer the construction grants program.

(2) Funds reserved under sections 205(j)(1) and 205(j)(5) of the Act must be calculated based on the State's full title II allotment, and cannot be transferred to the SRF.

(3) Funds reserved under sections 201(l)(2), 205(h), and 205(i) of the Act must also be calculated based upon the

State's full title II allotment. However, these reserves may be transferred into an SRF.

(4) The State must reserve from each fiscal year's title VI allotment the greater of one percent of its allotment or $100,000 to carry out planning under sections 205(j) and 303(e) of the Act.

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§ 35.3115 Eligible activities of the SRF.

Funds in the SRF shall not be used to provide grants. SRF balances must be available in perpetuity and must be used solely to provide loans and other authorized forms of financial assistance:

(a) To municipalities, intermunicipal, interstate, or State agencies for the construction of publicly owned wastewater treatment works as these are defined in section 212 of the Act and that appear on the State's priority list developed pursuant to section 216 of the Act; and

(b) For implementation of a nonpoint source pollution control management program under section 319 of the Act; and

(c) For development and implementation of an estuary conservation and management plan under section 320 of the Act.

§ 35.3120 Authorized types of assistance.

The SRF may provide seven general types of financial assistance.

(a) *Loans.* The SRF may award loans at or below market interest rates, or for zero interest.

(1) Loans may be awarded only if:

(i) All principal and interest payments on loans are credited directly to the SRF;

(ii) The annual repayment of principal and payment of interest begins not later than one year after project completion;

(iii) The loan is fully amortized not later than twenty years after project completion; and

(iv) Each loan recipient establishes one or more dedicated sources of revenue for repayment of the loan.

(2) Where construction of a treatment works has been phased or segmented, loan repayment requirements apply to the completion of individual phases or segments.

(b) *Refinancing existing debt obligations.* The SRF may buy or refinance local debt obligations at or below market rates, where the initial debt was incurred after March 7, 1985, and building began after that date.

(1) Projects otherwise eligible for refinancing under this section on which building began:

(i) Before January 28, 1988 (the effective date of the Initial Guidance for State Revolving Funds) must meet the requirements of title VI to be fully eligible.

(ii) After January 28, 1988, but before the effective date of this rule, must meet the requirements of title VI and of the Initial Guidance for State Revolving Funds to be fully eligible.

(iii) After March 19, 1990 must meet the requirements of this rule to be fully eligible.

(2) Where the original debt for a project was in the form of a multi-purpose bond incurred for purposes in addition to wastewater treatment facility construction, an SRF may provide refinancing only for eligible purposes, and not for the entire debt.

(c) *Guarantee or purchase insurance for local debt obligations.* The SRF may guarantee local debt obligations where such action would improve credit market access or reduce interest rates. The SRF may also purchase or provide bond insurance to guarantee debt service payment.

(d) *Guarantee SRF debt obligations.* The SRF may be used as security or as a source of revenue for the payment of principal and interest on revenue or general obligation bonds issued by the State provided that the net proceeds of the sale of such bonds are deposited in the SRF.

(e) *Loan guarantees for "sub-State revolving funds."* The SRF may provide loan guarantees for similar revolving funds established by municipal or intermunicipal agencies, to finance activities eligible under title VI.

(f) *Earn interest on fund accounts.* The SRF may earn interest on Fund accounts.

(g) *SRF administrative expenses.* (1) Money in the SRF may be used for the reasonable costs of administering the SRF, provided that the amount does not exceed 4 percent of all grant awards received by the SRF. Expenses of the SRF in excess of the amount permitted under this section must be paid for from sources outside the SRF.

(2) Allowable administrative costs include all reasonable costs incurred for management of the SRF program and for management of projects receiving financial assistance from the SRF. Reasonable costs unique to the SRF, such as costs of servicing loans and issuing debt, SRF program start-up costs, financial management, and legal consulting fees, and reimbursement costs for support services from other State agencies are also allowable.

(3) Unallowable administrative costs include the costs of administering the construction grant program under section 205(g), permit programs under sections 402 and 404 and Statewide wastewater management planning programs under section 208(b)(4).

(4) Expenses incurred issuing bonds guaranteed by the SRF, including the costs of insuring the issue, may be absorbed by the proceeds of the bonds, and need not be charged against the 4 percent administrative costs ceiling. The net proceeds of those issues must be deposited in the Fund.

§ 35.3125 Limitations on SRF assistance.

(a) *Prevention of double benefit.* If the SRF makes a loan in part to finance the cost of facility planning and preparation of plans, specifications, and estimates for the building of treatment works and the recipient subsequently receives a grant under section 201(g) for the building of treatment works and an allowance under section 201(1)(1), the SRF shall ensure that the recipient will promptly repay the loan to the extent of the allowance.

(b) *Assistance for the non-Federal share.* (1) The SRF shall not provide a loan for the non-Federal share of the cost of a treatment works project for which the recipient is receiving assistance from the EPA under any other authority.

(2) The SRF may provide authorized financial assistance other than a loan for the non-Federal share of a treatment works project receiving EPA assistance if the Governor or the Governor's designee determines that such assistance is necessary to allow the project to proceed.

(3) The SRF may provide loans for subsequent phases, segments, or stages of wastewater treatment works that previously received grant assistance for earlier phases, segments, or stages of the same treatment works.

(4) A community that receives a title II construction grant after the community has begun building with its own financing, may receive SRF assistance to refinance the pre-grant work, in accordance with the requirements for refinancing set forth under § 35.3120(b) of this part.

(c) *Publicly owned portions.* The SRF may provide assistance for only the publicly owned portion of the treatment works.

(d) *Private operation.* Contractual arrangements for the private operation of a publicly owned treatment works will not affect the eligibility of the treatment works for SRF financing.

(e) *Water quality management planning.* The SRF may provide assistance only to projects that are consistent with any plans developed under sections 205(j), 208, 303(e), 319 and 320 of the Act.

§ 35.3130 The capitalization grant agreement.

(a) *Contents.* The capitalization grant agreement must contain or incorporate by reference the State's application, Intended Use Plan, agreed upon payment schedule, State environmental review process and certifications or demonstrations of other agreement requirements and, where used, the SRF Operating Agreement.

(b) *Operating agreement.* At the option of the State, the organizational and administrative framework and those procedures of the SRF program that are not expected to change annually may be described in an Operating Agreement (OA). The OA must be incorporated by reference in the grant agreement.

(c) *Application requirements.* The State must certify in its application that it has the legal, managerial, technical, and operational capabilities to administer the program. (Approved by the Office of Management and Budget under control number 2040-0118)

§ 35.3135 Specific capitalization grant agreement requirements.

(a) *Agreement to accept payments.* The State must agree to accept grant payments in accordance with the negotiated payment schedule.

(b) *Provide a State match.* The State must agree to deposit into its SRF an amount equaling at least 20 percent of the amount of each grant payment.

(1) The State match must be deposited on or before the date on which the State receives each payment from the grant award. The State may maintain its match in an LOC or other financial arrangement similar to the Federal LOC, provided that the State's proportional share is converted to cash when the Federal LOC is drawn upon.

(2) Bonds issued by the State for the match may be retired from the interest earned by the SRF (including interest on SRF loans) if the net proceeds from the State issued bonds are deposited in the fund. Loan principal must be repaid to the SRF and cannot be used to retire State issued bonds.

(3) The State must identify the source of the matching amount in the capitalization grant application and must establish to the RA's satisfaction that the source is not Federal money, unless specifically authorized to be used for such purposes under the statute making the funds available.

(4) If the State provides a match in excess of the required amount, the excess balance may be banked toward subsequent match requirements.

(5) If the State has deposited State monies in a dedicated revolving fund after March 7, 1985 and prior to receiving a capitalization grant, the State may credit these monies toward the match requirement:

(i) If the monies were deposited in an SRF that subsequently received a capitalization grant and, if the deposit was expended, it was expended in accordance with title VI;

(ii) If the monies were deposited in a separate fund that has not received a capitalization grant, they were expended in accordance with title VI and an amount equal to all repayments of principal and payments of interest from these loans will be deposited in the Federally capitalized fund; or

(iii) If the monies were deposited in a separate fund and used as a reserve consistent with title VI, and an amount equal to the reserve is transferred to the Federally capitalized fund as its function is satisfied.

(c) *Binding commitments.* The State must make binding commitments in an amount equal to 120 percent of each quarterly grant payment within one year after the receipt of each quarterly grant payment.

(1) Binding commitments may be for any of the types of assistance provided for in sections 40 CFR 35.3120(a), (b), (c), (e) or (f) and for Fund administration under 40 CFR 35.3120(g).

(2) If the State commits more than the required 120 percent, EPA will recognize the cumulative value of the binding commitments, and the excess balance may be banked towards the binding commitment requirements of subsequent quarters.

(3) If the State does not make binding commitments equaling 120 percent of the quarterly grant payment within one year after it receives the payment, the RA may withhold future quarterly grant payments, and require adjustments to the payment schedule before releasing further payments.

(d) *Expeditious and timely expenditure.* The State must agree to expend all funds in the SRF in an expenditious and timely manner.

(e) *First use of funds.* (1) The State must agree to first use funds in the SRF equaling the amount of the grant, all repayments of principal and payments of interest on the initial loans from the grant, and the state match to address any major and minor publicly owned treatment works (POTW) that the Region and the State have previously identified as part of the National Municipal Policy list for the State.

(2) These funds may be used to fund the cost-effective reserve capacity of these projects.

(3) In order for a State to use these funds for other section 212 POTWs or for nonpoint source (section 319) or estuary (section 320) activities, the State must certify that the POTWs identified in § 35.3135(e)(1) are either:

(i) In compliance; or

(ii) On an enforceable schedule; or

(iii) Have an enforcement action filed; or

(iv) Have a funding commitment during or prior to the first year covered by the Intended Use Plan.

(4) Other funds in the SRF may be used at any time for the construction of any treatment works on the State's priority list or for activities under sections 319 and 320 of the Act.

(f) *Compliance with title II requirements.* (1) The State must agree that equivalency projects will comply with sections 201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1), and 513 of the Act.

(2) The State must comply only with the statutory requirements. The State may develop its own procedures for implementing the statutory provisions. The RA will accept State procedures provided that the procedures will adequately assure compliance with the statutory requirements, considered in the context of the SRF program.

(3) Where the State funds equivalency projects for more than the capitalization grant amount, EPA will recognize the cumulative value of the eligible costs of the equivalency projects, and the excess balance may be banked toward subsequent year equivalency requirements.

(4) Only those eligible costs actually funded with loans or other authorized assistance from the SRF may be credited toward satisfaction of the equivalency requirement, and only in the amount of that assistance.

(g) *State laws and procedures.* The State must agree to commit or expend each quarterly capitalization grant payment in accordance with the State's own laws and procedures regarding the commitment or expenditure of revenues.

(h) *State accounting and auditing procedures.* (1) The State must agree to establish fiscal controls and accounting procedures that are sufficient to assure proper accounting for payments received by the SRF, disbursements made by the SRF, and SRF balances at the beginning and end of the accounting period.

(2) The State must also agree to use accounting, audit, and fiscal procedures conforming to generally accepted government accounting standards as these are promulgated by the Governmental Accounting Standards Board. Generally accepted government

auditing standards are usually defined as, but not limited to, those contained in the U.S. General Accounting Office (GAO) publication "Government Auditing Standards" (1988 revision).

(i) *Recipient accounting and auditing procedures.* The State must agree to require recipients of SRF assistance to maintain project accounts in accordance with generally accepted government accounting standards as these are promulgated by the Government Accounting Standards Board. These accounts must be maintained as separate accounts.

(j) *Annual report.* The State must agree to make an Annual Report to the RA on the actual use of the funds, in accordance with section 606(d) of the Act.

§ 35.3140 Environmental review requirements.

(a) *Generally.* The State must agree to conduct reviews of the potential environmental impacts of all section 212 construction projects receiving assistance from the SRF, including nonpoint source pollution control (section 319) and estuary protection (section 320) projects that are also section 212 projects.

(b) *NEPA-like State environmental review process.* Equivalency projects must undergo a State environmental review process (SERP) that conforms generally to the National Environmental Policy Act (NEPA). The State may elect to apply the procedures at 40 CFR part 6, subpart E and related subparts, or apply its own "NEPA-like" SERP for conducting environmental reviews, provided that the following elements are met.

(1) *Legal foundation.* The State must have the legal authority to conduct environmental reviews of section 212 construction projects receiving SRF assistance. Such authority and supporting documentation must specify:

(i) The mechanisms to implement mitigation measures to ensure that a project is environmentally sound;

(ii) The legal remedies available to the public to challenge environmental review determinations and enforcement actions;

(iii) The State agency primarily responsible for conducting environmental reviews;

(iv) The extent to which environmental review responsibilities will be delegated to local recipients and will be subject to oversight by the primary State agency.

(2) *Interdisciplinary approach.* The State must employ an interdisciplinary approach for identifying and mitigating adverse environmental effects including, but not limited to, those associated with other applicable Federal environmental authorities.

(3) *Decision documentation.* The State must fully document the information, processes and premises that influence decisions to:

(i) Proceed with a project contained in a finding of no significant impact (FNSI) following documentation in an environmental assessment (EA);

(ii) Proceed or not proceed with a project contained in a record of decision (ROD) following preparation of a full environmental impact statement (EIS);

(iii) Reaffirm or modify a decision contained in a previously issued categorical exclusion (CE), EA/FNSI or EIS/ROD following a mandatory 5 year environmental reevaluation of a proposed project; and

(iv) If a State elects to implement processes for either partitioning an environmental review or CE from environmental review, the State must similarly document these processes in its proposed SERP.

(4) *Public notice and participation.* (i) The State must provide public notice when a CE is issued or rescinded, a FNSI is issued but before it becomes effective, a decision issued 5 years earlier is reaffirmed or revised, and prior to initiating an EIS.

(ii) Except with respect to a public notice of a categorical exclusion or reaffirmation of a previous decision, a formal public comment period must be provided during which no action on a project will be allowed.

(iii) A public hearing or meeting must be held for all projects except for those having little or no environmental effect.

(5) *Alternatives Consideration.* The State must have evaluation criteria and processes which allow for:

(i) Comparative evaluation among alternatives including the beneficial and adverse consequences on the existing environment, the future environment and individual sensitive environmental issues that are identified by project management or through public participation; and

(ii) Devising appropriate near-term and long-range measures to avoid, minimize or mitigate adverse impacts.

(c) *Alternative State environmental review process.* The State may elect to apply an alternative SERP to non-equivalency section 212 construction projects assisted by the SRF, provided that such process:

(1) Is supported by a legal foundation which establishes the State's authority to review section 212 construction projects;

(2) Responds to other environmental objectives of the State;

(3) Provides for comparative evaluations among alternatives and account for beneficial and adverse consequences to the existing and future environment;

(4) Adequately documents the information, processes and premises that influence an environmental determination; and

(5) Provides for notice to the public of proposed projects and for the opportunity to comment on alternatives and to examine environmental review documents. For projects determined by the State to be controversial, a public hearing must be held.

(d) *EPA approval process.* The RA must review and approve any State "NEPA-like" and alternative procedures to ensure that the requirements for both have been met. The RA will conduct these reviews on the basis of the criteria for evaluating NEPA-like reviews contained in Appendix A to this part.

(e) *Modifications to approved SERPs.* Significant changes to State environmental review procedures must be approved by the RA.

§ 35.3145 Application of other Federal authorities.

(a) *Generally.* The State must agree to comply and to require all recipients of funds "directly made available by" capitalization grants to comply with applicable Federal authorities.

(b) *Informing EPA.* The State must inform EPA when consultation or coordination by EPA with other Federal agencies is necessary to resolve issues regarding compliance with those requirements.

(c) *Civil Rights laws.* All programs, projects and activities of the State capitalization grant recipient must be in compliance with the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d et seq., section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 and section 13 of the Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500.

(d) *MBE/WBE requirements.* Requirements for the participation of minority and women owned businesses (MBE/WBEs) will apply to assistance in an amount equaling the grant. To attain compliance with MBE/WBE requirements, the RA will negotiate an overall "fair share" objective with the State for MBE/WBE participation on these SRF funded activities. A fair share objective should be based on the amount of the capitalization grant award or other State established goals. The State may accomplish its fair share objective by requiring certain equivalency projects to undertake

mative steps that will include the wing:

(1) Including small, minority and women's businesses on solicitation lists;

(2) Assuring that small, minority and women's businesses are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small, minority and women's businesses;

(4) Establishing delivery schedules, when the requirements of the work permit, which will encourage participation by small, minority and women's businesses;

(5) Using the services of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce, as appropriate; and

(6) If the contractor awards subagreements, requiring the contractor to take the affirmative steps in paragraphs (d)(1) through (d)(5) of this section.

(e) *MBE/WBE Reporting requirements* The State must submit an MBE/WBE Utilization Report (EPA Form SF 334) within 30 days after the end of each Federal fiscal quarter during ich the State or its subrecipients rd any subagreements.

§ 35.3150 Intended Use Plan (IUP).

(a) *Purpose.* The State must prepare a plan identifying the intended uses of the funds in the SRF and describing how those uses support the goals of the SRF. This Intended Use Plan (IUP) must be prepared annually and must be subjected to public comment and review before being submitted to EPA. EPA must receive the IUP prior to the award of the capitalization grant.

(b) *Contents*—(1) *List of Projects.* (i) The IUP must contain a list of publicly owned treatment works projects on the State's project priority list developed pursuant to section 216 of the Act, to be constructed with SRF assistance. This list must include: the name of the community; permit number or other applicable enforceable requirement, if available; the type of financial assistance; and the projected amount of eligible assistance.

(ii) The IUP must also contain a list of the nonpoint source and national estuary protection activities under sections 319 and 320 of the Act that the State expects to fund from its SRF.

(iii) The IUP must provide information in a format and manner that is sistent with the needs of the gional Offices.

(2) Short and long term goals. The IUP must describe the long and short term goals and objectives of the State's water pollution control revolving fund.

(3) Information on the SRF activities to be supported. The IUP must include information on the types of activities including eligible categories of costs to receive assistance, types of assistance to be provided, and SRF policies on setting the terms for the various types of assistance provided by the fund.

(4) Assurances and specific proposals. The IUP must provide assurances and specific proposals on the manner by which the State intends to meet the requirements of the following sections of this part: § 35.3135(c); § 35.3135(d); § 35.3135(e); § 35.3135(f); and § 35.3140.

(5) Criteria and method for distribution of funds.

(i) The IUP must describe the criteria and method established for the distribution of the SRF funds and the distribution of the funds available to the SRF among the various types of assistance the State will offer.

(ii) The IUP must describe the criteria and method the State will use to select section 212 treatment work project priority list and projects or programs to be funded as eligible activities for nonpoint sources and estuary protection management programs.

(c) *Amending the IUP.* The IUP project list may be changed during the year under provisions established in the IUP as long as the projects have been previously identified through the public participation process.

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§ 35.3155 Payments.

(a) *Payment schedule.* The State must include with each application for a capitalization grant a draft payment schedule based on the State's projection of binding commitments in its IUP. The payment schedule and the specific criteria establishing the conditions under which the State may draw cash from its LOC shall be jointly established by the Agency and the State and included in the capitalization grant agreement. Changes to the payment schedule, which may be negotiated during the year, will be effected through an amendment to the grant agreement.

(b) *Estimated disbursements.* With the first application for a capitalization grant, the State shall submit a schedule that reflects, by quarters, the estimated disbursements from that grant for the year following the grant award date. At the end of the third quarter of each Federal fiscal year thereafter, the State must provide the Agency with a schedule of estimated disbursements for the following Federal fiscal year. The State must advise the Agency when significant changes from the schedule of estimated disbursements are anticipated. This schedule must be developed in conformity with the procedures applicable to cash draws in § 35.3160 and must be at a level of detail sufficient to allow the Agency and the State to jointly develop and maintain a forecast of cash draws.

(c) *Timing of payments.* Payments to the LOC from a particular grant will begin in the quarter in which the grant is awarded and will end no later than the earlier of eight quarters after the capitalization grant is awarded or twelve quarters after advices of allowances are issued to the Regions.

(d) *General payment and cash draw rules.* (1) Except as described in § 35.3160(e) and § 35.3160(g), payments will be based on the State's schedule of binding commitments.

(2) The SRF or assistance recipient must first incur a cost, but not necessarily disburse funds for that cost, on an activity for which the State has entered into a binding commitment, in order to draw cash.

(3) Cash draws will be available only up to the amount of payments made.

(4) For loans or for refinancing or purchasing of municipal debt, planning, design and associated pre-building costs that are within the scope of a project built after March 7, 1985, may be included in the assistance agreement regardless of when they were incurred, provided these costs are in conformity with title VI of the Act. The State may draw cash for these incurred pre-building costs immediately upon executing an assistance agreement.

(5) A State may draw cash from the LOC equal to the proportional Federal share at which time the State will provide its proportional share. The Federal proportional share will be 83⅓ percent of incurred costs and the State's proportional share will be 16⅔ percent of the incurred costs, except as described below.

(i) Where the State provides funds in excess of the required 20 percent match, the proportional Federal share drawn from the LOC will be the ratio of Federal funds in the capitalization grant to the sum of the capitalization grant and the State funds. Alternatively, the State may identify a group of activities approximately equal to 120 percent of the grant amount, and draw cash from the LOC for 83⅓ percent of the incurred costs of the identified activities.

(ii) The Federal proportional share may exceed 83⅓ percent where a State is given credit for its match amount as a result of funding activities in prior years

(but after March 7, 1985), or for banking excess match in the SRF in prior years and disbursing these amounts prior to drawing cash. If the entire amount of the State's required match has been disbursed in advance, the Federal proportional share would be 100 percent.

§ 35.3160 Cash draw rules.

(a) *Loans.* The State may draw cash from the LOC when the SRF receives a request from a loan recipient, based on incurred costs, including prebuilding and building costs.

(b) *Refinance or purchase of municipal debt.* (1) Cash draw for completed construction. Except as indicated in paragraph (b)(2) of this section, cash draws shall be made at a rate no greater than equal amounts over the maximum number of quarters that payments can be made, pursuant to § 35.3155(c), and up to the portion of the LOC committed to the refinancing or purchase of the local debt. Cash draws for incurred building costs will generally be treated as refinanced costs.

(2) The State may immediately draw cash for up to five percent of each fiscal year's capitalization grant or two million dollars, whichever is greater, to refinance or purchase local debt.

(3) Projects or portions of projects not constructed. The State may draw cash based on incurred construction costs, as set forth in § 35.3160(a).

(4) Incremental disbursement bonds. For the purchase of incremental disbursement bonds from local governments, cash draws will be based on a schedule that coincides with the rate at which construction related costs are expected to be incurred for the project.

(c) *Purchase of insurance.* The State may draw cash to purchase insurance as premiums are due.

(d) *Guarantees and security for bonds.* (1) Cash draw in the event of default. In the event of an imminent default in debt service payments on the guaranteed/secured debt, the State can draw cash immediately up to the total amount of the LOC committed to the guarantee/security. If a balance remains in the guarantee portion of the LOC reserve after the default is covered, the State must negotiate a revised schedule for the remaining amount of the guarantee/security.

(2) Cash draw in the absence of default. (i) The State can draw cash up to the amount of the LOC dedicated for the guarantee or security in accordance with a schedule based on the national title II annual outlay rate (Yr 1: 7%; Yr 2: 35%; Yr 3: 28%; Yr 4: 20%; Yr 5: 12%), or actual construction cost. In the latter case, the amount of the cash draw would be the actual construction costs multiplied by the Federal share of the reserve multiplied by the ratio of the reserve to either the amount guaranteed or the proceeds of the bond issue.

(ii) In addition, in the case of a security the State can identify a group of projects whose value equals approximately the total of that portion of the LOC and the State match dedicated as a security. The State can then draw cash based on the incurred construction costs of the selected projects only, multiplied by the ratio of the Federal portion of the security to the entire security.

(3) *Aggressive leveraging exception.* Where the cash draw rules discussed in § 35.3160(d) would significantly frustrate a State's program, the Agency may permit an exception to these cash draw rules and provide for a more accelerated cash draw, where the State can demonstrate that:

(i) There are eligible projects ready to proceed in the immediate future with enough costs to justify the amount of the secured bond issue;

(ii) The absence of cash on an accelerated basis will substantially delay these projects;

(iii) If accelerated cash draws are allowed, the SRF will provide substantially more assistance; and

(iv) The long term viability of the State program to meet water quality needs will be protected.

(4) *Cash draw limitation.* When the LOC is used for securing State issued bonds, cash draws cannot be made at a rate greater than equal amounts over the maximum number of quarters that payments can be made, pursuant to § 35.3155(c). Exceptions to this limitation are in cases of default (see § 35.3160(d)(1)) and where cash draws are based on construction costs for all projects, as in § 35.3160(d)(2)(i).

(e) *Administrative expenses.* (1) Payments. One payment will be made at the time of the grant, based on the portion of the LOC estimated to be used for administrative expenses.

(2) Cash draw. The State can draw cash based on a schedule that coincides with the rate at which administrative expenses will be incurred, up to that portion of the LOC dedicated to administrative expenses.

(f) *Withholding payments.* If a State fails to take corrective action in accordance with section 605 of the Act, the Agency shall withhold payments to the SRF. Once a payment has been made by the Agency, that payment and cash draws from that payment will not be subject to withholding because of a State's failure to take corrective action.

§ 35.3165 Reports and audits.

(a) *Annual report.* The State must provide an Annual Report to the RA beginning the first fiscal year after it receives payments under title VI. The State should submit this report to the RA according to the schedule established in the grant agreement.

(b) *Matters to establish in the annual report.* In addition to the requirements in section 606(d) of the Act, in its annual report the State must establish that it has: (1) Reviewed all SRF funded section 212 projects in accordance with the approved environmental review procedures;

(2) Deposited its match on or before the date on which each quarterly grant payment was made;

(3) Assured compliance with the requirements of § 35.3135(f);

(4) Made binding commitments to provide assistance equal to 120 percent of the amount of each grant payment within one year after receiving the grant payment pursuant to § 35.3135(c);

(5) Expended all funds in an expeditious and timely manner pursuant to § 35.3135(d); and

(6) First used all funds as a result of capitalization grants to assure maintenance of progress toward compliance with the enforceable requirements of the Act pursuant to § 35.3135(e).

(c) *Annual review.* (1) Purpose. The purpose of the annual review is to assess the success of the State's performance of activities identified in the IUP and Annual Report, and to determine compliance with the terms of the capitalization grant agreement. The RA will complete the annual review according to the schedule established in the grant agreement.

(2) Records access. After reasonable notice by the RA, the State or assistance recipient must make available to the EPA such records as the RA reasonably requires to review and determine State compliance with the requirements of title VI. The RA may conduct onsite visits as needed to provide adequate programmatic review.

(d) *Annual audit.* (1) At least once a year the RA (through the Office of the Inspector General) will conduct, or require the State to have independently conducted, a financial and compliance audit of the SRF and the operations of the SRF. If the State is required to have an independently conducted audit performed, the State may designate an independent auditor of the State to carry out the audit or may contractually procure the service.

(2) The auditor can be a certified public accountant, a public accountant

licensed on or before December 31, 1970, or a governmental auditor who meets the qualification standards (Government Auditing Standards). In addition, the auditor must meet the independence standard as enumerated by the General Accounting Office and American Institute of Certified Public Accountants. The Office of the Inspector General may arrange for an EPA audit if the State fails to conduct the audit or if the State's review is otherwise unsatisfactory.

(3) The audit report required under section 606(b) must contain an opinion on the financial statements of the SRF and its internal controls, and a report on compliance with title VI.

(4) The audit report must be completed within one year of the end of the appropriate accounting period and submitted to the Office of the Inspector General within 30 days of completion. In cases of State conducted audits, the State will be notified within 90 days as to the acceptability of the audit report and its findings. Audits may be done in conjunction with the Single Audit Act.

(Approved by the Office of Management and Budget under control number 2040-0118)

§ 35.3170 Corrective action.

(a) *Causes.* If the RA determines that the State has not complied with requirements under title VI, the RA will notify the State of such noncompliance and prescribe the necessary corrective action. Failure to satisfy the terms of the capitalization grant agreement, including unmet conditions or assurances or invalid certifications, is grounds for a finding of noncompliance. In addition, if the State does not manage the SRF in a financially sound manner (e.g. allows consistent and substantial failures of loan repayments), the RA may take corrective action as provided under this section.

(b) *RA's course of action.* In making a determination of noncompliance with the capitalization grant agreement and devising the corrective action, the RA will identify the nature and cause of the problems. The State's corrective action must remedy the specific instance of noncompliance and adjust program management to avoid noncompliance in the future.

(c) *Consequences for failure to take corrective action.* If within 60 days of receipt of the noncompliance notice, a State fails to take the necessary actions to obtain the results required by the RA, or to provide an acceptable plan to achieve the results required, the RA shall withhold payments to the SRF until the State has taken acceptable actions. If the State fails to take the necessary corrective action deemed adequate by the RA within twelve months of receipt of the original notice, any withheld payments shall be deobligated and reallotted to other States.

(d) *Releasing payments.* Once the State has taken the corrective action deemed necessary and adequate by the RA, the withheld payments will be released and scheduled payments will recommence.

Appendix A—Criteria for evaluating a State's proposed NEPA-like process

The following criteria will be used by the RA to evaluate a proposed SERP.

(A) *Legal foundation.* Adequate documentation of the legal authority, including legislation, regulations or executive orders and/or Attorney General certification that authority exists.

(B) *Interdisciplinary approach.* The availability of expertise either in-house or otherwise accessible to the State Agency.

(C) *Decision documentation.* A description of a documentation process adequate to explain the basis for decisions to the public.

(D) *Public notice and participation.* A description of the process, including routes of publication (e.g., local newspapers and project mailing list), and use of established State legal notification systems for notices of intent, and criteria for determining whether a public hearing is required. The adequacy of a rationale where the comment period differs from that under NEPA and is inconsistent with other State review periods.

(E) *Consider alternatives.* The extent to which the SERP will adequately consider:

(1) Designation of a study area comparable to the final system;

(2) A range of feasible alternatives, including the no action alternative;

(3) Direct and indirect impacts;

(4) Present and future conditions;

(5) Land use and other social parameters including recreation and open-space considerations;

(6) Consistency with population projections used to develop State implementation plans under the Clean Air Act;

(7) Cumulative impacts including anticipated community growth (residential, commercial, institutional and industrial) within the project study area; and

(8) Other anticipated public works projects including coordination with such projects.

[FR Doc. 90-5842 Filed 3-16-90; 8:45 am]

BILLING CODE 6560-50-M

Attachment 2

ATTACHMENT #2

WORKING WITH SECTION 106

36 CFR Part 800:

Protection of Historic Properties

Regulations of the
Advisory Council on Historic Preservation
Governing the Section 106 Review Process

Advisory Council on Historic Preservation

Effective October 1, 1986

36 CFR PART 800: PROTECTION OF HISTORIC PROPERTIES

The italicized marginal annotations are intended to aid the reader in locating regulatory topics. They are not a part of the formal regulations.

The text immediately below was published in the Federal Register *on September 2, 1986 (51 FR 31115), as 36 CFR Part 800, "Protection of Historic Properties." These regulations govern the Section 106 review process established by the National Historic Preservation Act of 1966, as amended.*

SUBPART A—BACKGROUND AND POLICY

800.1 Authorities, purposes, and participants.

What §106 requires of Federal agencies

What §110(f) requires of Federal agencies

(a) Authorities. Section 106 of the National Historic Preservation Act requires a Federal agency head with jurisdiction over a Federal, federally assisted, or federally licensed undertaking to take into acount the effects of the agency's undertakings on properties included in or eligible for the National Register of Historic Places and, prior to approval of an undertaking, to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. Section 110(f) of the Act requires that Federal agency heads, 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 and, prior to approval of such undertaking, afford the Council a reasonable opportunity to comment. These regulations define the process used by a Federal agency to meet these responsibilities, commonly called the Section 106 process.

Accommodation of historic preservation concerns and needs of Federal undertakings

(b) Purposes of the Section 106 process. The Council seeks through the Section 106 process to accommodate historic preservation concerns with the needs of Federal undertakings. It is designed to identify potential conflicts between the two and to help resolve such conflicts in the public interest. The Council encourages this accommodation through consultation among the Agency Official, the State Historic Preservation Officer, and other interested persons during the early stages of planning. The Council regards the consultation process as an effective means for reconciling the interests of the consulting parties.

Early integration of §106 into project planning

Integration of the Section 106 process into the normal administrative process used by agencies for project planning ensures early, systematic consideration of historic preservation issues. To this end, the Council encourages agencies to examine their administrative processes to see that they provide adequately for the efficient identification and consideration of historic properties, that they provide for participation by the State Historic Preservation Officer and others interested in historic preservation, that they provide for timely requests for Council comment, and that they promote cost-effective implementation of the Section 106 process. When impediments are found to exist in the agency's administrative process, the agency is encouraged to consult with the Council to develop special Section 106 procedures suited to the agency's needs.

§106 participants

(c) Participants in the Section 106 process.

Consulting parties

(1) *Consulting parties.* Consulting parties are the primary participants in the Section 106 process whose responsibilities are defined by these regulations. Consulting parties may include:

Federal agency's general responsibilities

(i) *Agency Official.* The Agency Official with jurisdiction over an undertaking has legal responsibility for complying with Section 106. It is the responsibility of the Agency Official to identify and evaluate affected historic properties, assess an undertaking's effect upon them, and afford the Council its comment opportunity. The Agency Official may use the services of grantees, applicants, consultants, or designees to prepare the necessary information and analyses, but remains responsible for Section 106 compliance. The Agency Official should involve applicants for Federal assistance or approval in the Section 106 process as appropriate in the manner set forth below.

SHPO's general responsibilities

(ii) *State Historic Preservation Officer.* The State Historic Preservation Officer coordinates State participation in the implementation of the National Historic Preservation Act and is a key participant in the Section 106 process. The role of the State Historic Preservation Officer is to consult with and assist the Agency Official when identifying historic properties, assessing effects upon them, and considering alternatives to avoid or reduce those effects. The State Historic Preservation Officer reflects the interests of the State and its citizens in the preservation of their cultural heritage and helps the Agency Official identify those persons interested in an undertaking and its effects upon historic properties. When the State Historic Preservation Officer declines to participate or does not respond within 30 days to a written request for participation, the Agency Official shall consult with the Council, without the State Historic Preservation Officer, to complete the Section 106 process. The State Historic Preservation Officer may assume primary responsibility for reviewing Federal undertakings in the State by agreement with the Council as prescribed in Section 800.7 of these regulations.

Council's general responsibilities

(iii) *Council.* The Council is responsible for commenting to the Agency Official on an undertaking that affects historic properties. The official authorized to carry out the Council's responsibilities under each provision of the regulations is set forth in a separate, internal delegation of authority.

Interested persons' participation

(2) *Interested persons.* Interested persons are those organizations and individuals that are concerned with the effects of an undertaking on historic properties. Certain provisions in these regulations require that particular interested persons be invited to become consulting parties under certain circumstances. In addition, whenever the Agency Official, the State Historic Preservation Officer, and the Council, if participating, agree that active participation of an interested person will advance the objectives of Section 106, they may invite that person to become a consulting party. Interested persons may include:

Local governments' participation

(i) *Local governments.* Local governments are encouraged to take an active role in the Section 106 process when undertakings affect historic properties within their jurisdiction. When a local government has legal responsibility for Section 106 compliance under programs such as the Community Development Block Grant Program, participation as a consulting party is required. When no

such legal responsibility exists, the extent of local government participation is at the discretion of local government officials. If the State Historic Preservation Officer, the appropriate local government, and the Council agree, a local government whose historic preservation program has been certified pursuant to Section 101(c)(1) of the Act may assume any of the duties that are given to the State Historic Preservation Officer by these regulations or that originate from agreements concluded under these regulations.

Federal applicants' participation

(ii) *Applicants for Federal assistance, permits, and licenses.* When the undertaking subject to review under Section 106 is proposed by an applicant for Federal assistance or for a Federal permit or license, the applicant may choose to participate in the Section 106 process in the manner prescribed in these regulations.

Indian tribes' participation

(iii) *Indian tribes.* The Agency Official, the State Historic Preservation Officer, and the Council should be sensitive to the special concerns of Indian tribes in historic preservation issues, which often extend beyond Indian lands to other historic properties. When an undertaking will affect Indian lands, the Agency Official shall invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement. When an Indian tribe has established formal procedures relating to historic preservation, the Agency Official, State Historic Preservation Officer, and Council shall, to the extent feasible, carry out responsibilities under these regulations consistent with such procedures. An Indian tribe may participate in activities under these regulations in lieu of the State Historic Preservation Officer with respect to undertakings affecting its lands, provided the Indian tribe so requests, the State Historic Preservation Officer concurs, and the Council finds that the Indian tribe's procedures meet the purposes of these regulations. When an undertaking may affect properties of historic value to an Indian tribe on non-Indian lands, the consulting parties shall afford such tribe the opportunity to participate as interested persons. Traditional cultural leaders and other Native Americans are considered to be interested persons with respect to undertakings that may affect historic properties of significance to such persons.

Public participation

(iv) *The public.* The Council values the views of the public on historic preservation questions and encourages maximum public participation in the Section 106 process. The Agency Official, in the manner described below, and the State Historic Preservation Officer should seek and consider the views of the public when taking steps to identify historic properties, evaluate effects, and develop alternatives. Public participation in the Section 106 process may be fully coordinated with, and satisfied by, public participation programs carried out by Agency Officials under the authority of the National Environmental Policy Act and other pertinent statutes. Notice to the public under these statutes should adequately inform the public of preservation issues in order to elicit public views on such issues that can then be considered and resolved, when possible, in decisionmaking. Members of the public with interests in an undertaking and its effects on historic properties should be given reasonable opportunity to have an active role in the Section 106 process.

Definitions

800.2 Definitions.

"Act"

(a) "Act" means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. §§ 470-470w-6.

"Agency Official"

(b) "Agency Official" means the Federal agency head or a designee with authority over a specific undertaking, including any State or local government official who has been delegated legal responsibility for compliance with Section 106 and Section 110(f) in accordance with law.

"Area of potential effects"

(c) "Area of potential effects" means the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

"Council"

(d) "Council" means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

"Historic property"

(e) "Historic property" means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register. This term includes, for the purposes of these regulations, artifacts, records, and remains that are related to and located within such properties. The term "eligible for inclusion in the National Register" includes both properties formally determined as such by the Secretary of the Interior and all other properties that meet National Register listing criteria.

"Indian lands"

(f) "Indian lands" means all lands under the jurisdiction or control of an Indian tribe.

"Indian tribe"

(g) "Indian tribe" means the governing body of any Indian tribe, band, nation, or other group that is recognized as an Indian tribe by the Secretary of the Interior and for which the United States holds land in trust or restricted status for that entity or its members. Such term also includes any Native village corporation, regional corporation, and Native Group established pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. §1601, *et seq.*

"Interested person"

(h) "Interested person" means those organizations and individuals that are concerned with the effects of an undertaking on historic properties.

"Local government"

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

"National Historic Landmark"

(j) "National Historic Landmark" means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

"National Register"

(k) "National Register" means the National Register of Historic Places maintained by the Secretary of the Interior.

"National Register Criteria"

(l) "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).

"Secretary"

(m) "Secretary" means the Secretary of the Interior.

"SHPO"

(n) "State Historic Preservation Officer" means the official appointed or designated pursuant to Section 101(b)(1) of the Act to administer the State historic preservation program or a representative designated to act for the State Historic Preservation Officer.

"Undertaking"

(o) "Undertaking" means any project, activity, or program that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal agency or licensed or assisted by a Federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements not previously considered under Section 106.

How the §106 process works

SUBPART B—THE SECTION 106 PROCESS

800.3 General.

Scope of the regulations; alternative methods of meeting §106 requirements

(a) Scope. The procedure in this subpart guides Agency Officials, State Historic Preservation Officers, and the Council in the conduct of the Section 106 process. Alternative methods of meeting Section 106 obligations are found in Section 800.7, governing review of untertakings in States that have entered into agreements with the Council for Section 106 purposes, and Section 800.13, governing Programmatic Agreements with Federal agencies that pertain to specific programs or activities. Under each of these methods, the Council encourages Federal agencies to reach agreement on developing alternatives or measures to avoid or reduce effects on historic properties that meet both the needs of the undertaking and preservation concerns.

Procedural flexibility

(b) Flexible application. The Council recognizes that the procedures for the Agency Official set forth in these regulations may be implemented by the Agency Official in a flexible manner reflecting differing program requirements, as long as the purposes of Section 106 of the Act and these regulations are met.

Timing of the §106 process

Allowance for nondestructive planning before the §106 process is completed

(c) Timing. Section 106 requires the Agency Official to 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 or permit. The Council does not interpret this language to bar an Agency Official from expending funds on or authorizing nondestructive planning activities preparatory to an undertaking before complying with Section 106, or to prohibit phased compliance at different stages in planning. The Agency Official should ensure that the Section 106 process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration. The Agency Official should establish a schedule for completing the Section 106 process that is consistent with the planning and approval schedule for the undertaking.

Steps of the §106 process

800.4 Identifying historic properties.

Agency's determination of what information will be needed to complete the §106 process

(a) Assessing information needs.

(1) Following a determination by the Agency Official that a proposed project, activity, or program constitutes an undertaking and after establishing the undertaking's area of potential effects, the Agency Official shall:

(i) Review existing information on historic properties potentially affected by the undertaking, including any data concerning the likelihood that unidentified historic properties exist in the area of potential effects;

(ii) Request the views of the State Historic Preservation Officer on further actions to identify historic properties that may be affected; and

(iii) Seek information in accordance with agency planning processes from local governments, Indian tribes, public and private organizations, and other parties likely to have knowledge of or concerns with historic properties in the area.

(2) Based on this assessment, the Agency Official should determine any need for further actions, such as field surveys and predictive modeling, to identify historic properties.

Agency's location of historic properties in the project area

(b) Locating historic properties. In consultation with the State Historic Preservation Officer, the Agency Official shall make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the National Register. Efforts to identify historic properties should follow the Secretary's "Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716) and agency programs to meet the requirements of Section 110(a)(2) of the Act.

Agency's evaluation of whether properties found are "historic"

(c) Evaluating historical significance.

(1) In consultation with the State Historic Preservation Officer and following the Secretary's Standards and Guidelines for Evaluation, the Agency Official shall apply the National Register Criteria to properties that may be affected by the undertaking and that have not been previously evaluated for National Register eligibility. The passage of time or changing perceptions of significance may justify reevaluation of properties that were previously determined to be eligible or ineligible.

Agency/SHPO agreement about National Register eligibility of properties found

(2) If the Agency Official and the State Historic Preservation Officer agree that a property is eligible under the criteria, the property shall be considered eligible for the National Register for Section 106 purposes.

(3) If the Agency Official and the State Historic Preservation Officer agree that the criteria are not met, the property shall be considered not eligible for the National Register for Section 106 purposes.

Disagreement about National Register eligibility of properties found

(4) If the Agency Official and the State Historic Preservation Officer do not agree, or if the Council or the Secretary so request, the Agency Official shall obtain a determination from the Secretary of the Interior pursuant to applicable National Park Service regulations.

(5) If the State Historic Preservation Officer does not provide views, then the State Historic Preservation Officer is presumed to agree with the Agency Official's determination for the purpose of this subsection.

Agency's actions if no historic properties are found

(d) When no historic properties are found. If the Agency Official determines in accordance with Sections 800.4(a)-(c) that there are no historic properties that may be affected by the undertaking, the Agency Official shall provide documentation of this finding to the State Historic Preservation Officer. The Agency Official should notify interested persons and parties known to be interested in the undertaking and its possible effects on historic properties and make the documentation available to the public. In these circumstances, the Agency Official is not required to take further steps in the Section 106 process.

Agency's actions if historic properties are found

(e) When historic properties are found. If there are historic properties that the undertaking may affect, the Agency Official shall assess the effects in accordance with Section 800.5.

Agency's assessment of project effects on historic properties found

800.5 Assessing effects.

Agency's use of Criteria of Effect

(a) Applying the Criteria of Effect. In consultation with the State Historic Preservation Officer, the Agency Official shall apply the Criteria of Effect (Section 800.9(a)) to historic properties that may be affected, giving consideration to the views, if any, of interested persons.

Agency's actions if no effect is found

(b) When no effect is found. If the Agency Official finds the undertaking will have no effect on historic properties, the Agency Official shall notify the State Historic Preservation Officer and interested persons who have made their concerns known to the Agency Official and document the finding, which shall be available for public inspection. Unless the State Historic Preservation Officer objects within 15 days of receiving such notice, the Agency Official is not required to take any further steps in the Section 106 process. If the State Historic Preservation Officer files a timely objection, then the procedures described in Section 800.5(c) are followed.

Agency's use of Criteria of Adverse Effect

(c) When an effect is found. If an effect on historic properties is found, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Adverse Effect (Section 800.9(b)) to determine whether the effect of the undertaking should be considered adverse.

Agency's actions if effects are not adverse

(d) When the effect is not considered adverse.

(1) If the Agency Official finds the effect is not adverse, the Agency Official shall:

(i) Obtain the State Historic Preservation Officer's concurrence with the finding and notify and submit to the Council summary documentation, which shall be available for public inspection; or

(ii) Submit the finding with necessary documentation (Section 800.8(a)) to the Council for a 30-day review period and notify the State Historic Preservation Officer.

(2) If the Council does not object to the finding of the Agency Official within 30 days of receipt of notice, or if the Council objects but proposes changes that the Agency Official accepts, the Agency Official is not required to take any further steps in the Section 106 process other than to comply with any agreement with the State Historic Preservation Officer or Council concerning the undertaking. If the Council objects and the Agency Official does not agree with changes proposed by the Council, then the effect shall be considered as adverse.

Agency's actions if effects are adverse

(e) When the effect is adverse. If an adverse effect on historic properties is found, the Agency Official shall notify the Council and shall consult with the State Historic Preservation Officer to seek ways to avoid or reduce the effects on historic properties. Either the Agency Official or the State Historic Preservation Officer may request the Council to participate. The Council may participate in the consultation without such a request.

Consultation to avoid or reduce adverse effects; Council participation is optional

Invitation to interested persons to join in consultation

(1) *Involving interested persons.* Interested persons shall be invited to participate as consulting parties as follows when they so request:

(i) The head of a local government when the undertaking may affect historic properties within the local government's jurisdiction;

(ii) The representative of an Indian tribe in accordance with Section 800.1(c)(2)(iii);

(iii) Applicants for or holders of grants, permits, or licenses, and owners of affected lands; and

(iv) Other interested persons when jointly determined appropriate by the Agency Official, the State Historic Preservation Officer, and the Council, if participating.

Documentation needed for consultation

(2) *Documentation.* The Agency Official shall provide each of the consulting parties with the documentation set forth in Section 800.8(b) and such other documentation as may be developed in the course of consultation.

Public notification about consultation

(3) *Informing the public.* The Agency Official shall provide an adequate opportunity for members of the public to receive information and express their views. The Agency Official is encouraged to use existing agency public involvement procedures to provide this opportunity. The Agency Official, State Historic Preservation Officer, or the Council may meet with interested members of the public or conduct a public information meeting for this purpose.

Memorandum of Agreement (MOA) reached through consultation; MOA signatories

(4) *Agreement.* If the Agency Official and the State Historic Preservation Officer agree upon how the effects will be taken into account, they shall execute a Memorandum of Agreement. When the Council participates in the consultation, it shall execute the Memorandum of Agreement along with the Agency Official and the State Historic Preservation Officer. When the Council has not participated in consultation, the Memorandum of Agreement shall be submitted to the Council for comment in accordance with Section 800.6(a). As appropriate, the Agency Official, the State Historic Preservation Officer, and the Council, if participating, may agree to invite other consulting parties to concur in the agreement.

Amendments to MOA's

(5) *Amendments.* The Agency Official, the State Historic Preservation Officer, and the Council, if it was a signatory to the original agreement, may subsequently agree to an amendment to the Memorandum of Agreement. When the Council is not a party to the Memorandum of Agreement, or the Agency Official and the State Historic Preservation Officer cannot agree on changes to the Memorandum of Agreement, the proposed changes shall be submitted to the Council for comment in accordance with Section 800.6.

Ending consultation

(6) *Ending consultation.* The Council encourages Agency Officials and State Historic Preservation Officers to utilize the consultation process to the fullest extent practicable. After initiating consultation to seek ways to reduce or avoid effects on historic properties, the State Historic Preservation Officer, the Agency Official, or the Council, at its discretion, may state that further consultation will not be productive and thereby terminate the consultation process. The Agency Official shall then request the Council's comments in accordance with Section 800.6(b) and notify all other consulting parties of its requests.

800.6 Affording the Council an opportunity to comment.

Council review of an MOA

(a) Review of a Memorandum of Agreement.

Documentation for MOA review

(1) When an Agency Official submits a Memorandum of Agreement accompanied by the documentation specified in Section 800.8(b) and (c), the Council shall have 30 days from receipt to review it. Before this review period ends, the Council shall:

(i) Accept the Memorandum of Agreement, which concludes the Section 106 process, and inform all consulting parties; or

(ii) Advise the Agency Official of changes to the Memorandum of Agreement that would make it acceptable; subsequent agreement by the Agency Official, the State Historic Preservation Officer, and the Council concludes the Section 106 process; or

(iii) Decide to comment on the undertaking, in which case the Council shall provide its comments within 60 days of receiving the Agency Official's submission, unless the Agency Official agrees otherwise.

(2) If the Agency Official, the State Historic Preservation Officer, and the Council do not reach agreement in accordance with Section 800.6(a)(1)(ii), the Agency Official shall notify the Council, which shall provide its comments within 30 days of receipt of notice.

Council comment, absent an MOA

(b) Comment when there is no agreement.

Documentation for Council comment, absent an MOA

(1) When no Memorandum of Agreement is submitted, the Agency Official shall request Council comment and provide the documentation specified in Section 800.8(d). When requested by the Agency Official, the Council shall provide its comments within 60 days of receipt of the Agency Official's request and the specified documentation.

Additional information, onsite inspection, public meeting, absent an MOA

(2) The Agency Official shall make a good faith effort to provide reasonably available additional information concerning the undertaking and shall assist the Council in arranging an onsite inspection and public meeting when requested by the Council.

How the Council provides comments, absent an MOA

(3) The Council shall provide its comments to the head of the agency requesting comment. Copies shall be provided to the State Historic Preservation Officer, interested persons, and others as appropriate.

Agency's response to Council comment

(c) Response to Council comment.

(1) When a Memorandum of Agreement becomes final in accordance with Section 800.6(a)(1)(i) or (ii), the Agency Official shall carry out the undertaking in accordance with the terms of the agreement. This evidences fulfillment of the agency's Section 106 responsibilities. Failure to carry out the terms of a Memorandum of Agreement requires the Agency Official to resubmit the undertaking to the Council for comment in accordance with Section 800.6.

Failure to carry out terms of an MOA

Agency's consideration of Council comment

(2) When the Council has commented pursuant to Section 800.6(b), the Agency Official shall consider the Council's comments in reaching a final decision on the proposed undertaking. The Agency Official shall report the decision to the Council, and if possible, should do so prior to initiating the undertaking.

Agency actions that preempt reasonable opportunity for Council comment

(d) Foreclosure of the Council's opportunity to comment.

(1) The Council may advise an Agency Official that it considers the agency has not provided the Council a reasonable opportunity to comment. The decision to so advise the Agency Official will be reached by a majority vote of the Council or by a majority vote of a panel consisting of three or more Council members with the concurrence of the Chairman.

(2) The Agency Official will be given notice and a reasonable opportunity to respond prior to a proposed Council determination that the agency has foreclosed the Council's opportunity to comment.

Public objection to agency determinations about whether historic properties or effects are present

(e) Public requests to the Council.

(1) When requested by any person, the Council shall consider an Agency Official's finding under Sections 800.4(b), 800.4(c), 800.4(d), or 800.5(b) and, within 30 days of receipt of the request, advise the Agency Official, the State Historic Preservation Officer, and the person making the request of its views of the Agency Official's finding.

(2) In light of the Council views, the Agency Official should reconsider the finding. However, an inquiry to the Council will not suspend action on an undertaking.

(3) When the finding concerns the eligibility of a property for the National Register, the Council shall refer the matter to the Secretary.

Substitute review processes developed by States for §106 review

800.7 Agreements with States for Section 106 reviews.

(a) Establishment of State agreements.

(1) Any State Historic Preservation Officer may enter into an agreement with the Council to substitute a State review process for the procedures set forth in these regulations, provided that:

(i) The State historic preservation program has been approved by the Secretary pursuant to Section 101(b)(1) of the Act; and

(ii) The Council, after analysis of the State's review process and consideration of the views of Federal and State agencies, local governments, Indian tribes, and the public, determines that the State review process is at least as effective as, and no more burdensome than, the procedures set forth in these regulations in meeting the requirements of Section 106.

Council review of a proposed substitute State review process

(2) The Council, in analyzing a State's review process pursuant to Section 800.7(a)(1)(ii), shall:

(i) Review relevant State laws, Executive Orders, internal directives, standards, and guidelines;

(ii) Review the organization of the State's review process;

(iii) Solicit and consider the comments of Federal and State agencies, local governments, Indian tribes, and the public;

(iv) Review the results of program reviews carried out by the Secretary; and

(v) Review the record of State participation in the Section 106 process.

(3) The Council will enter into an agreement with a State under this section only upon determining, at minimum, that the State has a demonstrated record of performance in the Section 106 process and the capability to administer a comparable process at the State level.

SHPO/Council consultation about a proposed substitute State review process

(4) A State agreement shall be developed through consultation between the State Historic Preservation Officer and the Council and concurred in by the Secretary before submission to the Council for approval. The Council may invite affected Federal and State agencies, local governments, Indian tribes, and other interested persons to participate in this consultation. The agreement shall:

(i) Specify the historic preservation review process employed in the State, showing that this process is at least as effective as, and no more burdensome than, that set forth in these regulations;

(ii) Establish special provisions for participation of local governments or Indian tribes in the review of undertakings falling within their jurisdiction, when appropriate;

(iii) Establish procedures for public participation in the State review process;

(iv) Provide for Council review of actions taken under its terms, and for appeal of such actions to the Council; and

(v) Be certified by the Secretary as consistent with the Secretary's "Standards and Guidelines for Archeology and Historic Preservation."

(5) Upon concluding a State agreement, the Council shall publish notice of its execution in the *Federal Register* and make copies of the State agreement available to all Federal agencies.

Agency's use of substitute State review processes

(b) Review of undertakings when a State agreement is in effect.

(1) When a State agreement under Section 800.7(a) is in effect, an Agency Official may elect to comply with the State review process in lieu of compliance with these regulations.

(2) At any time during review of an undertaking under a State agreement, an Agency Official may terminate such review and comply instead with Sections 800.4 through 800.6 of these regulations.

(3) At any time during review of an undertaking under a State agreement, the Council may participate. Participants are encouraged to draw upon the Council's expertise as appropriate.

Monitoring or terminating substitute State review processes

(c) Monitoring and termination of State agreements.

(1) The Council shall monitor activities carried out under State agreements, in coordination with the Secretary of the Interior's approval of State programs under Section 101(b)(1) of the Act. The Council may request that the Secretary monitor such activities on its behalf.

(2) The Council may terminate a State agreement after consultation with the State Historic Preservation Officer and the Secretary.

(3) An agreement may be terminated by the State Historic Preservation Officer.

(4) When a State agreement is terminated pursuant to Section 800.7(c)(2) and (3), such termination shall have no effect on undertakings for which review under the agreement was complete or in progress at the time the termination occurred.

800.8 Documentation requirements.

Documentation for finding of no adverse effect

(a) Finding of no adverse effect. The purpose of this documentation is to provide sufficient information to explain how the Agency Official reached the finding of no adverse effect. The required documentation is as follows:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of historic properties that may be affected by the undertaking;

(3) A description of the efforts used to identify historic properties;

(4) A statement of how and why the Criteria of Adverse Effect were found inapplicable;

(5) The views of the State Historic Preservation Officer, affected local governments, Indian tribes, Federal agencies, and the public, if any were provided, as well as a description of the means employed to solicit those views.

Documentation required for consultation

(b) Finding of adverse effect. The required documentation is as follows:

(1) A description of the undertaking, including photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, using materials already compiled during the evaluation of significance, as appropriate; and

(4) A description of the undertaking's effects on historic properties.

Documentation required for submitting a signed MOA for Council review

(c) Memorandum of Agreement. When a memorandum is submitted for review in accordance with Section 800.6(a)(1), the documentation, in addition to that specified in Section 800.8(b), shall also include a description and evaluation of any proposed mitigation measures or alternatives that were considered to deal with the undertaking's effects and a summary of the views of the State Historic Preservation Officer and any interested persons.

Documentation required for requesting written Council comment, absent an MOA

(d) Requests for comment when there is no agreement. The purpose of this documentation is to provide the Council with sufficient information to make an independent review of the undertaking's effects on historic properties as the basis for informed and meaningful comments to the Agency Official. The required documentation is as follows:

(1) A description of the undertaking, with photographs, maps, and drawings, as necessary;

(2) A description of the efforts to identify historic properties;

(3) A description of the affected historic properties, with information on the significant characteristics of each property;

(4) A description of the effects of the undertaking on historic properties and the basis for the determinations;

(5) A description and evaluation of any alternatives or mitigation measures that the Agency Official proposes for dealing with the undertaking's effects;

(6) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection;

(7) Documentation of consultation with the State Historic Preservation Officer regarding the identification and evaluation of historic properties, assessment of effect, and any consideration of alternatives or mitigation measures;

(8) A description of the Agency Official's efforts to obtain and consider the views of affected local governments, Indian tribes, and other interested persons;

(9) The planning and approval schedule for the undertaking; and

(10) Copies or summaries of any written views submitted to the Agency Official concerning the effects of the undertaking on historic properties and alternatives to reduce or avoid those effects.

800.9 Criteria of Effect and Adverse Effect.

Criteria of Effect

(a) An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of the property's location, setting, or use may be relevant depending on a property's significant characteristics and should be considered.

Criteria of Adverse Effect

(b) An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Adverse effects on historic properties include, but are not limited to:

(1) Physical destruction, damage, or alteration of all or part of the property;

(2) Isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the National Register;

(3) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;

(4) Neglect of a property resulting in its deterioration or destruction; and

(5) Transfer, lease, or sale of the property.

Exceptions to the Criteria of Adverse Effect

(c) Effects of an undertaking that would otherwise be found to be adverse may be considered as being not adverse for the purpose of these regulations:

(1) When the historic property is of value only for its potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines;

(2) When the undertaking is limited to the rehabilitation of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected historic property through conformance with the Secretary's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings"; or

(3) When the undertaking is limited to the transfer, lease, or sale of a historic property, and adequate restrictions or conditions are included to ensure preservation of the property's significant historic features.

SUBPART C—SPECIAL PROVISIONS

Special agency requirements for National Historic Landmarks

800.10 Protecting National Historic Landmarks.

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 Sections 800.4 through 800.6 and give special consideration to protecting National Historic Landmarks as follows:

(a) Any consultation conducted under Section 800.5(e) shall include the Council;

(b) The Council may request the Secretary under Section 213 of the Act to provide a report to the Council detailing the significance of the property, describing the effects of the undertaking on the property, and recommending measures to avoid, minimize, or mitigate adverse effects; and

(c) The Council shall report its comments, including Memoranda of Agreement, to the President, the Congress, the Secretary, and the head of the agency responsible for the undertaking.

Discovery of historic properties after a project has begun

800.11 Properties discovered during implementation of an undertaking.

Prior agency planning for discoveries

(a) Planning for discoveries.

When the Agency Official's identification efforts in accordance with Section 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking, the Agency Official is encouraged to develop a plan for the treatment of such properties if discovered and include this plan in any documentation prepared to comply with Section 800.5.

(b) Federal agency responsibilities.

(1) When an Agency Official has completed the Section 106 process and prepared a plan in accordance with Section 800.11(a), the Agency Official shall satisfy the requirements of Section 106 concerning properties discovered during implementation of an undertaking by following the plan.

Agency responsibilities absent a plan for discoveries

(2) When an Agency Official has completed the Section 106 process without preparing a plan in accordance with Section 800.11(a) and finds after beginning to carry out the undertaking that the undertaking will affect a previously unidentified property that may be eligible for inclusion in the National Register, or affect a known historic property in an unanticipated manner, the Agency Official shall afford the Council an opportunity to comment by choosing one of the following courses of action:

(i) Comply with Section 800.6;

(ii) Develop and implement actions that take into account the effects of the undertaking on the property to the extent feasible and the comments from the State Historic Preservation Officer and the Council pursuant to Section 800.11(c); or

(iii) If the property is principally of archeological value and subject to the requirements of the Archeological and Historic Preservation Act, 16 U.S.C. §§ 469 (a)-(c), comply with that Act and implementing regulations instead of these regulations.

(3) Section 106 and these regulations do not require the Agency Official to stop work on the undertaking. However, depending on the nature of the property and the undertaking's apparent effects on it, the Agency Official should make reasonable efforts to avoid or minimize harm to the property until the requirements of this section are met.

Council comments when historic properties are discovered after a project has begun

(c) Council Comments.

(1) When comments are requested pursuant to Section 800.11(b)(2)(i), the Council will provide its comments in a time consistent with the Agency Official's schedule, regardless of longer time periods allowed by these regulations for Council review.

(2) When an Agency Offical elects to comply with Section 800.11(b)(2)(ii), the Agency Official shall notify the State Historic Preservation Officer and the Council at the earliest possible time, describe the actions proposed to take effects into account, and request the Council's comments. The Council shall provide interim comments to the Agency Official within 48 hours of the request and final comments to the Agency Official within 30 days of the request.

(3) When an Agency Official complies with Section 800.11(b)(2)(iii), the Agency Official shall provide the State Historic Preservation Officer an opportunity to comment on the work undertaken and provide the Council with a report on the work after it is undertaken.

Agency actions to determine National Register eligibility of newly discovered properties

(d) Other considerations.

(1) When a newly discovered property has not previously been included in or determined eligible for the National Register, the Agency Official may assume the property to be eligible for purposes of Section 106.

Discovery of properties on Indian lands

(2) When a discovery occurs and compliance with this section is necessary on lands under the jurisdiction of an Indian tribe, the Agency Official shall consult with the Indian tribe during implementation of this section's requirements.

Waiver of §106 requirements during disasters or declared emergencies

800.12 Emergency undertakings.

(a) When a Federal agency head proposes an emergency action and elects to waive historic preservation responsibilities in accordance with 36 CFR § 78.2, the Agency Official may comply with the requirements of 36 CFR Part 78 in lieu of these regulations. An Agency Official should develop plans for taking historic properties into account during emergency operations. At the request of the Agency Official, the Council will assist in the development of such plans.

(b) When an Agency Official proposes an emergency undertaking as an essential and immediate response to a disaster declared by the President or the appropriate Governor, and Section 800.12(a) does not apply, the Agency Official may satisfy Section 106 by notifying the Council and the appropriate State Historic Preservation Officer of the emergency undertaking and affording them an opportunity to comment within seven days if the Agency Official considers that circumstances permit.

(c) For the purposes of activities assisted under Title I of the Housing and Community Development Act of 1974, as amended, Section 800.12(b) also applies to an imminent threat to public health or safety as a result of natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or the State Historic Preservation Officer objects, the Agency Official shall comply with Sections 800.4 through 800.6.

30-day timeframe for §106 waiver in disaster situations

(d) This section does not apply to undertakings that will not be implemented within 30 days after the disaster or emergency. Such undertakings shall be reviewed in accordance with Sections 800.4 through 800.6.

Agency's use of Programmatic Agreements

800.13 Programmatic Agreements.

(a) Application. An Agency Official may elect to fulfill an agency's Section 106 responsibilities for a particular program, a large or complex project, or a class of undertakings that would otherwise require numerous individual requests for comments, through a Programmatic Agreement. Programmatic Agreements are appropriate for programs or projects:

Examples of projects or programs suitable for Programmatic Agreements

(1) When effects on historic properties are similar and repetitive or are multi-State or national in scope;

(2) When effects on historic properties cannot be fully determined prior to approval;

(3) When non-Federal parties are delegated major decisionmaking responsibilities;

(4) That involve development of regional or land-management plans; or

(5) That involve routine management activities at Federal installations.

Agency/Council consultation to reach a Programmatic Agreement

(b) Consultation process. The Council and the Agency Official shall consult to develop a Programmatic Agreement. When a particular State is affected, the appropriate State Historic Preservation Officer shall be a consulting party. When the agreement involves issues national in scope, the President of the National Conference of State Historic Preservation Officers or a designated representative shall be invited to be a consulting party by the Council. The Council and the Agency Official may agree to invite other Federal agencies or others to be consulting parties or to participate, as appropriate.

Public involvement in Programmatic Agreement consultation

(c) Public involvement. The Council, with the assistance of the Agency Official, shall arrange for public notice and involvement appropriate to the subject matter and the scope of the program. Views from affected units of State and local government, Indian tribes, industries, and organizations will be invited.

Signatories of a Programmatic Agreement

(d) Execution of the Programmatic Agreement. After consideration of any comments received and reaching final agreement, the Council and the Agency Official shall execute the agreement. Other consulting parties may sign the Programmatic Agreement as appropriate.

Effect of a Programmatic Agreement

(e) Effect of the Programmatic Agreement. An approved Programmatic Agreement satisfies the Agency's Section 106 responsibilities for all individual undertakings carried out in accordance with the agreement until it expires or is terminated.

Public notification of a Programmatic Agreement

(f) Notice. The Council shall publish notice of an approved Programmatic Agreement in the *Federal Register* and make copies readily available to the public.

Failure to carry out terms of a Programmatic Agreement

(g) Failure to carry out a Programmatic Agreement. If the terms of a Programmatic Agreement are not carried out or if such an agreement is terminated, the Agency Official shall comply with Sections 800.4 through 800.6 with regard to individual undertakings covered by the agreement.

Coordination of §106 with other authorities

800.14 Coordination with other authorities.

To the extent feasible, Agency Officials, State Historic Preservation Officers, and the Council should encourage coordination of implementation of these regulations with the steps taken to satisfy other historic preservation and environmental authorities by:

Coordination with NEPA environmental studies

(a) Integrating compliance with these regulations with the processes of environmental review carried out pursuant to the National Environmental Policy Act, and coordinating any studies needed to comply with these regulations with studies of related natural and social aspects;

Multipurpose determinations and agreements

(b) Designing determinations and agreements to satisfy the terms not only of Section 106 and these regulations, but also the requirements of such other historic preservation authorities as the Archeological and Historic Preservation Act, the Archeological Resources Protection Act, Section 110 of the National Historic Preservation Act, and Section 4(f) of the Department of Transportation Act, as applicable, so that a single document can be used for the purposes of all such authorities;

Multipurpose studies and surveys

(c) Designing and executing studies, surveys, and other information-gathering activities for planning and undertaking so that the resulting information and data is adequate to meet the requirements of all applicable Federal historic preservation authorities; and

Coordinated public involvement

(d) Using established agency public involvement processes to elicit the views of the concerned public with regard to an undertaking and its effects on historic properties.

Agency's use of counterpart regulations to substitute for 36 CFR Part 800

800.15 Counterpart regulations.

In consultation with the Council, agencies may develop counterpart regulations to carry out the Section 106 process. When concurred in by the Council, such counterpart regulations shall stand in place of these regulations for the purposes of the agency's compliance with Section 106.

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Attachment 3

ATTACHMENT #3

federal register

Thursday
September 29, 1983

Part IV

Department of the Interior

National Park Service

Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines

DEPARTMENT OF THE INTERIOR

National Park Service

Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: This notice sets forth the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. These standards and guidelines are not regulatory and do not set or interpret agency policy. They are intended to provide technical advice about archeological and historic preservation activities and methods.

DATE: These Standards and Guidelines are effective on September 29, 1983.

FOR FURTHER INFORMATION CONTACT: Lawrence E. Aten, Chief, Interagency Resources Division, National Park Service, United States Department of the Interior, Washington, D.C. 20240 (202-343-9500). A Directory of Technical Information listing other sources of supporting information is available from the National Park Service.

SUPPLEMENTARY INFORMATION: The Standards and Guidelines are prepared under the authority of Sections 101(f), (g), and (h), and Section 110 of the National Historic Preservation Act of 1966, as amended. State Historic Preservation Officers; Federal Preservation Officers including those of the Department of Agriculture, Department of Defense, Smithsonian Institution and General Services Administration; the Advisory Council on Historic Preservation; the National Trust for Historic Preservation; and other interested parties were consulted during the development of the Standards and Guidelines; additional consultation with these agencies will occur as the Standards and Guidelines are tested during their first year of use.

Purpose

The proposed Standards and the philosophy on which they are based result from nearly twenty years of intensive preservation activities at the Federal, State, and local levels.

The purposes of the Standards are:

To organize the information gathered about preservation activities.

To describe results to be achieved by Federal agencies, States, and others when planning for the identification, evaluation, registration and treatment of historic properties.

To integrate the diverse efforts of many entities performing historic preservation into a systematic effort to preserve our nation's cultural heritage.

Uses of the Standards

The following groups or individuals are encouraged to use these Standards:

Federal agency personnel responsible for cultural resource management pursuant to Section 110 of the National Historic Preservation Act, as amended, in areas under Federal jurisdiction. A separate series of guidelines advising Federal agencies on their specific historic preservation activities under Section 110 is in preparation.

State Historic Preservation Offices responsible under the National Historic Preservation Act, as amended, for making decisions about the preservation of historic properties in their States in accordance with appropriate regulations and the Historic Preservation Fund Grants Management Manual. The State Historic Preservation Offices serve as the focal point for preservation planning and act as a central state-wide repository of collected information.

Local governments wishing to establish a comprehensive approach to the identification, evaluation, registration and treatment of historic properties within their jurisdictions.

Other individuals and organizations needing basic technical standards and guidelines for historic preservation activities.

Organization

This material is organized in three sections: Standards; Guidelines; and recommended technical sources, cited at the end of each set of guidelines. Users of this document are expected to consult the recommended technical sources to obtain guidance in specific cases.

Review of the Standards and Guidelines

The Secretary of the Interior's Standards for Rehabilitation have recently undergone extensive review and their guidelines made current after 5 years of field use. Users and other interested parties are encouraged to submit written comments on the utility of these Standards and Guidelines except for the Rehabilitation Standards mentioned above. This edition will be thoroughly reviewed by the National Park Service (including consultation with Federal and State agencies), after the end of its first full year of use and any necessary modifications will be made. Subsequent reviews are anticipated as needed. Comments should be sent to Chief, Interagency Resources Division, National Park Service, United States Department of the Interior, Washington, D.C. 20240.

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Secretary of the Interior's Standards for Preservation Planning

Preservation planning is a process that organizes preservation activities (identification, evaluation, registration and treatment of historic properties) in a logical sequence. The Standards for Planning discuss the relationship among these activities while the remaining activity standards consider how each activity should be carried out. The Professional Qualifications Standards discuss the education and experience required to carry out various activities.

The Standards for Planning outline a process that determines when an area should be examined for historic properties, whether an identified property is significant, and how a significant property should be treated.

Preservation planning is based on the following principles:

—Important historic properties cannot be replaced if they are destroyed. Preservation planning provides for conservative use of these properties, preserving them in place and avoiding harm when possible and altering or destroying properties only when necessary.

—If planning for the preservation of historic properties is to have positive effects, it must begin before the identification of all significant properties has been completed. To make responsible decisions about historic properties, existing information must be used to the maximum extent and new information must be acquired as needed.

—Preservation planning includes public participation. The planning process should provide a forum for open discussion of preservation issues. Public involvement is most meaningful when it is used to assist in defining values of properties and preservation planning issues, rather than when it is limited to review of decisions already made. Early

and continuing public participation is essential to the broad acceptance of preservation planning decisions.

Preservation planning can occur at several levels or scales: in a project area; in a community; in a State as a whole; or in the scattered or contiguous landholdings of a Federal agency. Depending on the scale, the planning process will involve different segments of the public and professional communities and the resulting plans will vary in detail. For example, a State preservation plan will likely have more general recommendations than a plan for a project area or a community. The planning process described in these Standards is flexible enough to be used at all levels while providing a common structure which promotes coordination and minimizes duplication of effort. The Guidelines for Preservation Planning contain additional information about how to integrate various levels of planning.

Standard I. Preservation Planning Establishes Historic Contexts

Decisions about the identification, evaluation, registration and treatment of historic properties are most reliably made when the relationship of individual properties to other similar properties is understood. Information about historic properties representing aspects of history, architecture, archeology, engineering and culture must be collected and organized to define these relationships. This organizational framework is called a "historic context." The historic context organizes information based on a cultural theme and its geographical and chronological limits. Contexts describe the significant broad patterns of development in an area that may be represented by historic properties. The development of historic contexts is the foundation for decisions about identification, evaluation, registration and treatment of historic properties.

Standard II. Preservation Planning Uses Historic Contexts To Develop Goals and Priorities for the Identification, Evaluation, Registration and Treatment of Historic Properties

A series of preservation goals is systematically developed for each historic context to ensure that the range of properties representing the important aspects of each historic context is identified, evaluated and treated. Then priorities are set for all goals identified for each historic context. The goals with assigned priorities established for each historic context are integrated to produce a comprehensive and consistent set of goals and priorities for all historic contexts in the geographical area of a planning effort.

The goals for each historic context may change as new information becomes available. The overall set of goals and priorities are then altered in response to the changes in the goals and priorities for the individual historic contexts.

Activities undertaken to meet the goals must be designed to deliver a usable product within a reasonable period of time. The scope of the activity must be defined so the work can be completed with available budgeted program resources.

Standard III. The Results of Preservation Planning Are Made Available for Integration Into Broader Planning Processes

Preservation of historic properties is one element of larger planning processes. Planning results, including goals and priorities, information about historic properties, and any planning documents, must be transmitted in a usable form to those responsible for other planning activities. Federally mandated historic preservation planning is most successfully integrated into project management planning at an early stage. Elsewhere, this integration is achieved by making the results of preservation planning available to other governmental planning bodies and to private interests whose activities affect historic properties.

Secretary of the Interior's Guidelines for Preservation Planning

Introduction

These Guidelines link the Standards for Preservation Planning with more specific guidance and technical information. They describe one approach to meeting the Standards for Preservation Planning. Agencies, organizations or individuals proposing to approach planning differently may wish to review their approaches with the National Park Service.

The Guidelines are organized as follows:

Managing the Planning Process
Developing Historic Contexts
Developing Goals for a Historic Context
Integrating Individual Historic Contexts—Creating the Preservation Plan
Coordinating with Management Frameworks
Recommended Sources of Technical Information

Managing the Planning Process

The preservation planning process must include an explicit approach to implementation, a provision for review and revision of all elements, and a mechanism for resolving conflicts within the overall set of preservation goals and between this set of goals and other land use planning goals. It is recommended that the process and its products be described in public documents.

Implementing the Process

The planning process is a continuous cycle. To establish and maintain such a process, however, the process must be divided into manageable segments that can be performed within a defined period, such as a fiscal year or budget cycle. One means of achieving this is to define a period of time during which all the preliminary steps in the planning process will be completed. These preliminary steps would include setting a schedule for subsequent activities.

Review and Revision

Planning is a dynamic process. It is expected that the content of the historic contexts described in Standard I and the goals and priorities described in Standard II will be altered based on new information obtained as planning proceeds. The incorporation of this information is essential to improve the content of the plan and to keep it up-to-date and useful. New information must be reviewed regularly and systematically, and the plan revised accordingly.

Public Participation

The success of the preservation planning process depends on how well it solicits and integrates the views of various groups. The planning process is directed first toward resolving conflicts in goals for historic preservation, and second toward resolving conflicts between historic preservation goals and other land-use planning goals. Public participation is intergral to this approach and includes at least the following actions:

1. Involving historians, architectural historians, archeologists, historical architects, folklorists and persons from related discipline to define, review and revise the historic contexts, goals and priorities;

2. Involving interested individuals, organizations and communities in the planning area in identifying the kinds of historic properties that may exist and suitable protective measures;

3. Involving prospective users of the preservation plan in defining issues, goals and priorities;

4. Providing for coordination with other planning efforts at local, state, regional and national levels, as appropriate; and

5. Creating mechanisms for identifying and resolving conflicts about historic preservation issues.

The development of historic contexts, for example, should be based on the professional input of all disciplines involved in preservation and not be limited to a single discipline. For prehistoric archeology, for example, data from fields such as geology, geomorphology and geography may also be needed. The individuals and organizations to be involved will depend, in part, on those present or interested in the planning area.

Documents Resulting from the Planning Process

In most cases, the planning process produces documents that explain how the process works and that discuss the historic contexts and related goals and priorities. While the process can operate in the absence of these documents, planning documents are important because they are the most effective means of communicating the process and its recommendations to others. Planning documents also record decisions about historic properties.

As various parts of the planning process are reviewed and revised to reflect current information, related documents must also be updated. Planning documents should be created in a form that can be easily revised. It is also recommended that the format, language and organization of any documents or other materials (visual aids, etc.) containing preservation planning information meet the needs of prospective users.

Developing Historic Contexts

General Approach

Available information about historic properties must be divided into manageable units before it can be useful for planning purposes. Major decisions about identifying, evaluating, registering and treating historic properties are most reliably made in the context of other related properties. A historic context is an organizational format that groups information about related historic properties, based on a theme, geographic limits and chronological period. A single historic context describes one or more aspects of the historic development of an area, considering history, architecture, archeology, engineering and culture; and identifies the significant patterns that individual historic properties represent, for example, Coal Mining in Northeastern Pennsylvania between 1860 and 1930. A set of historic contexts is a comprehensive summary of all aspects of the history of the area.

The historic context is the cornerstone of the planning process. The goal of preservation planning is to identify, evaluate, register and treat the full range of properties representing each historic context, rather than only one or two types of properties. Identification activities are organized to ensure that research and survey activities include properties representing all aspects of the historic context. Evaluation uses the historic context as the framework within which to apply the criteria for evalution to specific properties or property types. Decisions about treatment of properties are made with the goal of treating the range of properties in the context. The use of historic contexts in organizing major preservation activities ensures that those activities result in the preservation of the wide variety of properties that represent our history, rather than only a small, biased sample of properties.

Historic contexts, as theoretical constructs, are linked to actual historic properties through the concept of property type. Property types permit the development of plans for identification, evaluation and treatment even in the absence of complete knowledge of individual properties. Like the historic context, property types are artifical constructs which may be revised as necessary.

Historic contexts can be developed at a variety of scales appropriate for local, State and regional planning. Given the probability of historic contexts overlapping in an area, it is important to coordinate the development and use of contexts at all levels. Generally, the State Historic Preservation Office possesses the most complete body of information about historic properties and, in practice, is in the best position to perform this function.

The development of historic contexts generally results in documents that describe the prehistoric processes or patterns that define the context. Each of the contexts selected should be developed to the point of identifying important property types to be useful in later preservation decision-making. The amount of detail included in these summaries will vary depending on the level (local, state, regional, or national) at which the contexts are developed and on their intended uses. For most planning purposes, a synopsis of the written description of the historic context is sufficient.

Creating a Historic Context

Generally, historic contexts should not be constructed so broadly as to include all property types under a single historic context or so narrowly as to contain only one property type per historic context. The following procedures should be followed in creating a historic context.

1. Identify the concept, time period and geographical limits for the historic context

Existing information, concepts, theories, models and descriptions should be used as the basis for defining historic contexts. Biases in primary and secondary sources should be identified and accounted for when existing information is used in defining historic contexts.

The identification and description of historic contexts should incorporate contributions from all disciplines involved in historic preservation. The chronological period and geographical area of each historic context should be defined after the conceptual basis is established. However, there may be exceptions, especially in defining prehistoric contexts where drainage systems or physiographic regions often are outlined first. The geographical boundaries for historic contexts should not be based upon contemporary political, project or other contemporary boundaries if those boundaries do not coincide with historical boundaries. For example, boundaries for prehistoric contexts will have little relationship to contemporary city, county or state boundaries.

2. Assemble the existing information about the historic context

a. *Collecting information:* Several kinds of information are needed to construct a preservation plan. Information about the history of the area encompassed by the historic context must be collected, including any information about historic properties that have already been identified. Existing survey or inventory entries are an important source of information about historic properties. Other sources may include literature on prehistory, history, architecture and the environment; social and environmental impact assessments; county and State land use plans; architectural and folklife studies and oral histories; ethnographic research; State historic inventories and registers; technical reports prepared for Section 106 or other assessments of historic properties; and and direct consultation with individuals and organized groups.

In addition, organizations and groups that may have important roles in defining historic contexts and values

should be identified. In most cases a range of knowlegeable professionals drawn from the preservation, planning and academic communities will be available to assist in defining contexts and in identifying sources of information. In other cases, however, development of historic contexts may occur in areas whose history or prehistory has not been extensively studied. In these situations, broad general historic contexts should be initially identified using available literature and expertise, with the expectation that the contexts will be revised and subdivided in the future as primary source research and field survey are conducted. It is also important to identify such sources of information as existing planning data, which is needed to establish goals for identification, evaluation, and treatment, and to identify factors that will affect attainment of those goals.

The same approach for obtaining information is not necessarily desirable for all historic contexts. Information should not be gathered without first considering its relative importance to the historic context, the cost and time involved, and the expertise required to obtain it. In many cases, for example, published sources may be used in writing initial definitions of historic contexts; archival research or field work may be needed for subsequent activities.

b. *Assessing information:* All information should be reviewed to identify bias in historic perspective, methodological approach, or area of coverage. For example, field surveys for archeological sites may have ignored historic archelolgical sites, or county land use plans may have emphasized only development goals.

3. Synthesize information

The information collection and analysis results in a written narrative of the historic context. This narrative provides a detailed synthesis of the data that have been collected and analyzed. The narrative covers the history of the area from the chosen perspective and identifies important patterns, events, persons or cultural values. In the process of identifying the important patterns, one should consider:

a. Trends in area settlement and development, if relevant;

b. Aesthetic and artistic values embodied in architecture, construction technology or craftsmanship;

c. Research values or problems relevant to the historic context; social and physical sciences and humanities; and cultural interests of local communities; and

d. Intangible cultural values of ethnic groups and native American peoples.

4. Define property types

A property type is a grouping of individual properties based on shared physical or associative characteristics. Property types link the ideas incorporated in the theoretical historic context with actual historic properties that illustrate those ideas. Property types defined for each historic context should be directly related to the conceptual basis of the historic context. Property types defined for the historic context "Coal Mining in Northeastern Pennsylvania, 1860–1930" might include coal extraction and processing complexes; railroad and canal transportation systems; commercial districts; mine workers' housing; churches, social clubs and other community facilities reflecting the ethnic origins of workers; and residences and other properties associated with mine owners and other industrialists.

a. *Identify property types:* The narrative should discuss the kinds of properties expected within the geographical limits of the context and group them into those property types most useful in representing important historic trends.

Generally, property types should be defined after the historic context has been defined. Property types in common usage ("Queen Anne houses," "mill buildings," or "stratified sites") should not be adopted without first verifying their relevance to the historic contexts being used.

b. *Characterize the locational patterns of property types:* Generalizations about where particular types of properties are likely to be found can serve as a guide for identification and treatment. Generalizations about the distribution of archeological properties are frequently used. The distribution of other historic properties often can be estimated based on recognizable historical, environmental or cultural factors that determined their location. Locational patterns of property types should be based upon models that have an explicit theoretical or historical basis and can be tested in the field. The model may be the product of historical research and analysis ("Prior to widespread use of steam power, mills were located on rivers and streams able to produce water power" or "plantation houses in the Mississippi Black Belt were located on sandy clay knolls"), or it may result from sampling techniques. Often the results of statistically valid sample surveys can be used to describe the locational patterns of a representative portion of properties belonging to a particular property type. Other surveys can also provide a basis for suggesting locational patterns if a diversity of historic properties was recorded and a variety of environmental zones was inspected. It is likely that the identification of locational patterns will come from a combination of these sources. Expected or predicted locational patterns of property types should be developed with a provision made for their verification.

c. *Characterize the current condition of property types:* The expected condition of property types should be evaluated to assist in the development of identification, evaluation and treatment strategies, and to help define physical integrity thresholds for various property types. The following should be assessed for each property type:

(1) Inherent characteristics of a property type that either contribute to or detract from its physical preservation. For example, a property type commonly constructed of fragile materials is more likely to be deteriorated than a property type constructed of durable materials; structures whose historic function or design limits the potential for alternative uses (water towers) are less likely to be reused than structures whose design allows a wider variety of other uses (commercial buildings or warehouses).

(2) Aspects of the social and natural environment that may affect the preservation or visibility of the property type. For example, community values placed on certain types of properties (churches, historic cemeteries) may result in their maintenance while the need to reuse valuable materials may stimulate the disappearance of properties like abandoned houses and barns.

It may be most efficient to estimate of the condition of property types based on professional knowledge of existing properties and field test these estimates using a small sample of properties representative of each type.

5. Identify information needs

Filling gaps in information is an important element of the preservation plan designed for each historic context. Statements of the information needed should be as specific as possible, focusing on the information needed, the historic context and property types it applies to, and why the information is needed to perform identification, evaluation, or treatment activities.

Developing Goals for a Historic Context

Developing Goals

A goal is a statement of preferred preservation activities, which is

generally stated in terms of property types.

The purpose of establishing preservation goals is to set forth a "best case" version of how properties in the historic context should be identified, evaluated, registered and treated. Preservation goals should be oriented toward the greatest possible protection of properties in the historic context and should be based on the principle that properties should be preserved in place if possible, through affirmative treatments like rehabilitation, stabilization or restoration. Generally, goals will be specific to the historic context and will often be phrased in terms of property types. Some of these goals will be related to information needs previously identified for the historic context. Collectively, the goals for a historic context should be a coherent statement of program direction covering all aspects of the context.

For each goal, a statement should be prepared identifying:

1. The goal, including the context and property types to which the goal applies and the geographical area in which they are located;
2. The activities required to achieve the goal;
3. The most appropriate methods or strategies for carrying out the activities;
4. A schedule within which the activities should be completed; and
5. The amount of effort required to accomplish the goal, as well as a way to evaluate progress toward its accomplishment.

Setting priorities for goals

Once goals have been developed they need to be ranked in importance. Ranking involves examining each goal in light of a number of factors.

1. General social, economic, political and environmental conditions and trends affecting (positively and negatively) the identification, evaluation, registration and treatment of property types in the historic context.

Some property types in the historic context may be more directly threatened by deterioration, land development patterns, contemporary use patterns, or public perceptions of their value, and such property types should be given priority consideration.

2. Major cost or technical considerations affecting the identification, evaluation and treatment of property types in the historic context.

The identification or treatment of some property types may be technically possible but the cost prohibitive; or techniques may not currently perfected (for example, the identification of submerged sites or objects, or the evaluation of sites containing material for which dating techniques are still being developed).

3. Identification, evaluation, registration and treatment activities previously carried out for property types in the historic context.

If a number of properties representing one aspect of a historic context have been recorded or preserved, treatment of additional members of that property type may receive lower priority than treatment of a property type for which no examples have yet been recorded or preserved. This approach ensures that the focus of recording or preserving all elements of the historic context is retained, rather than limiting activities to preserving properties representing only some aspects of the context.

The result of considering the goals in light of these concerns will be a list of refined goals ranked in order of priority.

Integrating Individual Contexts—Creating the Preservation Plan

When historic contexts overlap geographically, competing goals and priorities must be integrated for effective preservation planning. The ranking of goals for each historic context must be reconciled to ensure that recommendations for one context do not contradict those for another. This important step results in an overall set of priorities for several historic contexts and a list of the activities to be performed to achieve the ranked goals. When applied to a specific geographical area, this is the preservation plan for that area.

It is expected that in many instances historic contexts will overlap geographically. Overlapping contexts are likely to occur in two combinations—those that were defined at the same scale (i.e., textile development in Smithtown 1850–1910 and Civil War in Smithtown 1855–1870) and those defined at different scales (i.e., Civil War in Smithtown and Civil War in the Shenandoah Valley). The contexts may share the same property types, although the shared property types will probably have different levels of importance, or they may group the same properties into different property types, reflecting either a different scale of analysis or a different historical perspective.

As previously noted, many of the goals that the formulated for a historic context will focus on the property types defined for that context. Thus it is critical that the integration of goals include the explicit consideration of the potential for shared property type membership by individual properties. For example, when the same property types are used by two contexts, reconciling the goals will require weighing the level of importance assigned to each property type. The degree to which integration of historic contexts must involve reconciling property types may be limited by the coordinated development of historic contexts used at various levels.

Integration with Management Frameworks

Preservation goals and priorities are adapted to land units through integration with other planning concerns. This integration must involve the resolution of conflicts that arise when competing resources occupy the same land base. Successful resolution of these conflicts can often be achieved through judicious combination of inventory, evaluation and treatment activities. Since historic properties are irreplaceable, these activities should be heavily weighted to discourage the destruction of significant properties and to be compatible with the primary land use.

Recommended Sources of Technical Information

Resource Protection Planning Process. State and Plans Grants Division, 1980. Washington, D.C. Available from Survey and Planning Branch, Interagency Resources Division, National Park Service, Department of the Interior, Washington, D.C. 20240. Outlines a step-by-step approach to implementing the resource protection planning process.

Resource Protection Planning Process Case Studies. Available from Survey and Planning Branch, Interagency Resources Division, National Park Service, Department of the Interior, Washington, D.C. 20240. Reports prepared by State Historic Preservation Offices and other using the planning process.

Planning Theory. Andreas Faludi, 1980. Oxford: Pergamon Press. Constructs a model of planning using concepts borrowed from general systems theory.

SECRETARY OF THE INTERIOR'S STANDARDS FOR IDENTIFICATION

Identification activities are undertaken to gather information about historic properties in an area. The scope of these activities will depend on: existing knowledge about properties; goals for survey activities developed in the planning process; and current management needs.

Standard I. Identification of Historic Properties Is Undertaken to the Degree Required To Make Decisions

Archival research and survey activities should be designed to gather the information necessary to achieve defined preservation goals. The

objectives, chosen methods and techniques, and expected results of the identification activities are specified in a research design. These activities may include archival research and other techniques to develop historic contexts, sampling an area to gain a broad understanding of the kinds of properties it contains, or examining every property in an area as a basis for property specific decisions. Where possible, use of quantitative methods is important because it can produce an estimate, whose reliability may be assessed, of the kinds of historic properties that may be present in the studied area. Identification activities should use a search procedure consistent with the management needs for information and the character of the area to be investigated. Careful selection of methods, techniques and level of detail is necessary so that the gathered information will provide a sound basis for making decisions.

Standard II. Results of Identification Activities are Integrated Into the Preservation Planning Process

Results of identification activities are reviewed for their effects on previous planning data. Archival research or field survey may refine the understanding of one or more historic contexts and may alter the need for additional survey or study of particular property types. Incorporation of the results of these activities into the planning process is necessary to ensure that the planning process is always based on the best available information.

Standard III. Identification Activities Include Explicit Procedures for Record-Keeping and Information Distribution

Information gathered in identification activities is useful in other preservation planning activities only when it is systematically gathered and recorded, and made available to those responsible for preservation planning. The results of identification activities should be reported in a format that summarizes the design and methods of the survey, provides a basis for others to review the results, and states where information on identified properties is maintained. However, sensitive information, like the location of fragile resources, must be safeguarded from general public distribution.

Secretary of the Interior's Guidelines for Identification

Introduction

These Guidelines link the Standards for Identification with more specific guidance and technical information. The Guidelines outline one approach to meet the Standards for Identification. Agencies, organizations and individuals proposing to approach identification differently may wish to review their approaches with the National Park Service.

The Guidelines are organized as follows:

Role of Identification in the Planning Process
Performing Identification
Integrating Identification Results
Reporting Identification Results
Recommended Sources of Technical Information

Role of Identification in the Planning Process

Identification is undertaken for the purpose of locating historic properties and is composed of a number of activities which include, but are not limited to archival research, informant interviews, field survey and analysis. Combinations of these activities may be selected and appropriate levels of effort assigned to produce a flexible series of options. Generally identification activities will have multiple objectives, reflecting complex management needs. Within a comprehensive planning process, identification is normally undertaken to acquire property-specific information needed to refine a particular historic context or to develop any new historic contexts. (See the Guidelines for Preservation Planning for discussion of information gathering to establish plans and to develop historic contexts.) The results of identification activities are then integrated into the planning process so that subsequent activities are based on the most up-to-date information. Identification activities are also undertaken in the absence of a comprehensive planning process, most frequently as part of a specific land-use or development project. Even lacking a formally developed preservation planning process, the benefits of efficent, goal-directed research may be obtained by the development of localized historic contexts, suitable in scale for the project area, as part of the background research which customarily occurs before field survey efforts.

Performing Identification

Research Design

Identification activities are essentially research activities for which a statement of objectives or research design should be prepared before work is performed. Within the framework of a comprehensive planning process, the research design provides a vehicle for integrating the various activities performed during the identification process and for linking those activities directly to the goals and the historic context(s) for which those goals were defined. The research design stipulates the logical integration of historic context(s) and field and laboratory methodology. Although these tasks may be performed individually, they will not contribute to the greatest extent possible in increasing information on the historic context unless they relate to the defined goals and to each other. Additionally, the research design provides a focus for the integration of interdisciplinary information. It ensures that the linkages between specialized activities are real, logical and address the defined research questions. Identification activities should be guided by the research design and the results discussed in those terms. (See Reporting Identification Results)

The research design should include the following:

1. *Objectives* of the identification activities. For example: to characterize the range of historic properties in a region; to identify the number of properties associated with a context; to gather information to determine which properties in an area are significant.

The statement of objectives should refer to current knowledge about the historic contexts or property types, based on background research or assessments of previous research. It should clearly define the physical extent of the area to be investigated and the amount and kinds of information to be gathered about properties in the area.

2. *Methods* to be used to obtain the information. For example: archival research or field survey. Research methods should be clearly and specifically related to research problems.

Archival research or survey methods should be carefully explained so that others using the gathered information can understand how the information was obtained and what its possible limitations or biases are.

The methods should be compatible with the past and present environmental character of the geographical area under study and the kinds of properties most likely to be present in the area.

3. *The expected results* and the reasons for those expections.

Expectations about the kind, number, location, character and condition of historic properties are generally based on a combination of background research, proposed hypotheses, and analogy to the kinds of properties known to exist in areas of similar environment or history.

Archival Research

Archival or background research is generally undertaken prior to any field survey. Where identification is undertaken as part of a comprehensive planning process, background research may have taken place as part of the development of the historic contexts (see the Guidelines for Preservation Planning). In the absence of previously developed historic contexts, archival research should address specific issues and topics. It should not duplicate previous work. Sources should include, but not be limited to, historical maps, atlases, tax records, photographs, ethnographies, folklife documentation, oral histories and other studies, as well as standard historical reference works, as appropriate for the research problem. (See the Guidelines for Historical Documentation for additional discussion.)

Field Survey

The variety of field survey techniques available, in combination with the varying levels of effort that may be assigned, give great flexibility to implementing field surveys. It is important that the selection of field survey techniques and level of effort be responsive to the management needs and preservation goals that direct the survey effort.

Survey techniques may be loosely grouped into two categories, according to their results. First are the techniques that result in the characterization of a region's historic properties. Such techniques might include "windshield" or walk-over surveys, with perhaps a limited use of sub-surface survey. For purposes of these Guidelines, this kind of survey is termed a "reconnaissance." The second category of survey techniques is those that permit the identification and description of specific historic properties in an area; this kind of survey effort is termed "intensive." the terms "reconnaissance" and "intensive" are sometimes defined to mean particular survey techniques, generally with regard to prehistoric sites. The use of the terms here is general and is not intended to redefine the terms as they are used elsewhere.

Reconnaissance survey might be most profitably employed when gathering data to refine a developed historic context—such as checking on the presence or absence of expected property types, to define specific property types or to estimate the distribution of historic properties in an area. The results of regional characterization activities provide a general understanding of the historic properties in a particular area and permit management decisions that consider the sensitivity of the area in terms of historic preservation concerns and the resulting implications for future land use planning. The data should allow the formulation of estimates of the necessity, type and cost of further identification work and the setting of priorities for the individual tasks involved. In most cases, areas surveyed in this way will require resurvey if more complete information is needed about specific properties.

A reconnaissance survey should document:

1. The kinds of properties looked for;
2. The boundaries of the area surveyed;
3. The method of survey, including the extent of survey coverage;
4. The kinds of historic properties present in the surveyed area;
5. Specific properties that were identified, and the categories of information collected; and
6. Places examined that did not contain historic properties.

Intensive survey is most useful when it is necessary to know precisely what historic properties exist in a given area or when information sufficient for later evaluation and treatment decisions is needed on individual historic properties. Intensive survey describes the distribution of properties in an area; determines the number, location, and condition of properties; determines the types of properties actually present within the area; permits classification of individual properties; and records the physical extent of specific properties.

An intensive survey should document:

1. The kinds of properties looked for;
2. The boundaries of the area surveyed;
3. The method of survey, including an estimate of the extent of survey coverage;
4. A record of the precise location of all properties identified; and
5. Information on the appearance, significance, integrity and boundaries of each property sufficient to permit an evaluation of its significance.

Sampling

Reconnaissance or intensive survey methods may be employed according to a sampling procedure to examine less-than-the-total project or planning area.

Sampling can be effective when several locations are being considered for an undertaking or when it is desirable to estimate the cultural resources of an area. In many cases, especially where large land areas are involved, sampling can be done in stages. In this approach, the results of the initial large area survey are used to structure successively smaller, more detailed surveys. This "nesting" approach is an efficient technique since it enables characterization of both large and small areas with reduced effort. As with all investigative techniques, such procedures should be designed to permit an independent assessment of results.

Various types of sample surveys can be conducted, including, but not limited to: random, stratified and systematic. Selection of sample type should be guided by the problem the survey is expected to solve, the nature of the expected properties and the nature of the area to be surveyed.

Sample surveys may provide data to estimate frequencies of properties and types of properties within a specified area at various confidence levels. Selection of confidence levels should be based upon the nature of the problem the sample survey is designed to address.

Predictive modeling is an application of basic sampling techniques that projects or extrapolates the number, classes and frequencies of properties in unsurveyed areas based on those found in surveyed areas. Predictive modeling can be an effective tool during the early stages of planning an undertaking, for targeting field survey and for other management purposes. However, the accuracy of the model must be verified; predictions should be confirmed through field testing and the model redesigned and retested if necessary.

Special survey techniques

Special survey techniques may be needed in certain situations.

Remote sensing techniques may be the most effective way to gather background environmental data, plan more detailed field investigations, discover certain classes of properties, map sites, locate and confirm the presence of predicted sites, and define features within properties. Remote sensing techniques include aerial, subsurface and underwater techniques. Ordinarily the results of remote sensing should be verified through independent field inspection before making any evaluation or statement regarding frequencies or types of properties.

Integrating Identification Results

The results of identification efforts must be integrated into the planning process so that planning decisions are based on the best available information. The new informantion is first assessed against the objectives of the identification effort to determine whether the gathered information meets

the defined identification goals for the historic context(s); then the goals are adjusted accordingly. In addition, the historic context narrative, the definition of property types and the planning goals for evaluation and treatment are all adjusted as necessary to accommodate the new data.

Reporting Identification Results

Reporting of the results of identification activities should begin with the statement of objectives prepared before undertaking the survey. The report should respond to each of the major points documenting:

1. Objectives;
2. Area researched or surveyed;
3. Research design or statement of objectives;
4. Methods used, including the intensity of coverage. If the methods differ from those outlined in the statement of objectives, the reasons should be explained.
5. Results: how the results met the objectives; result analysis, implications and recommendations; where the compiled information is located.

A summary of the survey results should be available for examination and distribution. Identified properties should then be evaluated for possible inclusion in appropriate inventories.

Protection of information about archeological sites or other properties that may be threatened by dissemination of that information is necessary. These may include fragile archeological properties or properties such as religious sites, structures, or objects, whose cultural value would be compromised by public knowledge of the property's location.

Recommended Sources of Technical Information

The Archeological Survey: Methods and Uses. Thomas F. King. Interagency Archeological Services, U.S. Department of the Interior, 1978. Washington, D.C. Available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. GPO stock number 024-016-00091. Written primarily for the non-archeologist, this publication presents methods and objectives for archeological surveys.

Cultural Resources Evaluation of the Northern Gulf of Mexico Continental Shelf. National Park Service, U.S. Department of the Interior, 1977.

Guidelines for Local Surveys: A Basis for Preservation Planning. Anne Derry, H. Ward Jandl, Carol Shull and Jan Thorman. National Register Division, U.S. Department of the Interior, 1978. Washington, D.C. Available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. GPO stock number 024-016-0089-7. General guidance about designing and carrying out community surveys.

The Process of Field Research: Final Report on the Blue Ridge Parkway Folklife Project. American Folklife Center, 1981.

Regional Sampling in Archeology. David Hurst Thomas. University of California, Archeological Survey Annual Report, 1968-9, 11:87-100.

Remote Sensing: A Handbook for Archeologists and Cultural Resource Managers. Thomas R. Lyons and Thomas Eugene Avery. Cultural Resource Management Division, National Park Service, U.S. Department of the Interior, 1977.

Remote Sensing and Non-Destructive Archeology. Thomas R. Lyons and James L. Ebert, editors. Remote Sensing Division, Southwest Cultural Resources Center, National Park Service, U.S. Department of the Interior and University of New Mexico, 1978.

Remote Sensing Experiments in Cultural Resource Studies: Non-Destructive Methods of Archeological Exploration, Survey and Analysis. Thomas R. Lyons, assembler. reports of the Chaco Center, Number One. National Park Service, U.S. Department of the Interior and University of New Mexico, 1976.

Sampling in Archeology. James W. Mueller, editor. University of Arizona Press, 1975. Tucson, Arizona.

Scholars as Contractors. William J. Mayer-Oakes and Alice W. Portnoy, editors. Cultural Resource Management Studies. U.S. Department of the Interior, 1979.

Sedimentary Studies of Prehistoric Archeological Sites. Sherwood Gagliano, Charles Pearson, Richard Weinstein, Diana Wiseman, and Christopher McClendon. Division of State Plans and Grants, National Park Service, U.S. Department of the Interior, 1982. Washington, D.C. Available from Coastal Environments Inc., 1260 Main Street, Baton Rouge, Louisiana 70802. Establishes and evaluates a method for employing sedimentological analysis in distinguishing site areas from non-site areas when identifying submerged archeological sites on the continental shelf.

State Survey Forms. Available from Interagency Resource Management Division, National Park Service, Department of the Interior, Washington, D.C. 20240. Characterizes cultural resource survey documentation methods in State Historic Preservation Offices.

Truss Bridge Types: A Guide to Dating and Identifying. Donald C. Jackson and T. Allan Comp. American Association for State and Local History, 1977. Nashville, Tennessee. Technical leaflet #95. Available from AASLH, 708 Berry Road, Nashville, Tennessee 37204. Information about performing surveys of historic bridges and identifying the types of properties encountered.

Secretary of the Interior's Standards for Evaluation

Evaluation is the process of determining whether identified properties meet defined criteria of significance and therefore should be included in an inventory of historic properties determined to meet the criteria. The criteria employed vary depending on the inventory's use in resource management.

Standard I. Evaluation of the Significance of Historic Properties Uses Established Criteria

The evaluation of historic properties employs criteria to determine which properties are significant. Criteria should therefore focus on historical, architectural, archeological, engineering and cultural values, rather than on treatments. A statement of the minimum information necessary to evaluate properties against the criteria should be provided to direct information gathering activities.

Because the National Register of Historic Places is a major focus of preservation activities on the Federal, State and local levels, the National Register criteria have been widely adopted not only as required for Federal purposes, but for State and local inventories as well. The National Historic Landmark criteria and other criteria used for inclusion of properties in State historic site files are other examples of criteria with different management purposes.

Standard II. Evaluation of Significance Applies the Criteria Within Historic Contexts

Properties are evaluated using a historic context that identifies the significant patterns that properties represent and defines expected property types against which individual properties may be compared. Within this comparative framework, the criteria for evaluation take on particular meaning with regard to individual properties.

Standard III. Evaluation Results in A List or Inventory of Significant Properties That Is Consulted In Assigning Registration and Treatment Priorities

The evaluation process and the subsequent development of an inventory of significant properties is an on-going activity. Evaluation of the significance of a property should be completed before registration is considered and before preservation treatments are selected. The inventory entries should contain sufficient information for subsequent activities such as registration or treatment of properties, including an evaluation statement that makes clear the significance of the property within one or more historic contexts.

Standard IV. Evaluation Results Are Made Available to the Public

Evaluation is the basis of registration and treatment decisions. Information about evaluation decisions should be organized and available for use by the general public and by those who take part in decisions about registration and treatment. Use of appropriate computer-assisted data bases should be a part of the information dissemination effort. Sensitive information, however, must be safeguarded from general public distribution.

Secretary of the Interior's Guidelines for Evaluation

Introduction

These Guidelines link the Standards for Evaluation with more specific guidance and technical information. These Guidelines describe one approach to meeting the Standards for Evaluation. Agencies, organizations, or individuals proposing to approach evaluation differently may wish to review their approach with the National Park Service.

The Guidelines are organized as follows:

The Evalauation Process
Criteria
Application of Criteria within a Historic Context
Inventory
Recommended Sources of Technical Information

The Evaluation Process

These Guidelines describe principles for evaluating the significance of one or more historic properties with regard to a given set of criteria.

Groups of related properties should be evaluated at the same time whenever possible; for example, following completion of a theme study or community survey.

Evaluation should not be undertaken using documentation that may be out of date. Prior to proceeding with evaluation the current condition of the property should be determined and previous analyses evaluated in light of any new information.

Evaluation must be performed by persons qualified by education, training and experience in the application of the criteria. Where feasible, evaluation should be performed in consultation with other individuals experienced in applying the relevant criteria in the geographical area under consideration; for example, the State Historic Preservation Officer or local landmarks commission.

Evaluation is completed with a written determination that a property is or is not significant based on provided information. This statement should be part of the record.

Criteria: The purposes of evaluation criteria should be made clear. For example, the criteria may be used "to evaluate properties for inclusion in the county landmarks list," or "to implement the National Register of Historic Places program."

For Federal cultural resource management purposes, criteria used to develop an inventory should be coordinated with the National Register criteria for evaluation as implemented in the approved State comprehensive historic preservation plan.

Content of Criteria: Criteria should be appropriate in scale to the purpose of the evaluation. For example, criteria designed to describe national significance should not be used as the basis for creating a county or State inventory. Criteria should be categorical and not attempt to describe in detail every property likely to qualify. Criteria should outline the disciplines or broad areas of concern (history, archeology, architectural history, engineering and culture, for example) included within the scope of the inventory; explain what kinds of properties, if any, are excluded and the reasons for exclusion; and define how levels of significance are measured, if such levels are incorporated into the criteria. If the criteria are to be used in situations where the National Register criteria are also widely used, it is valuable to include a statement explaining the relationship of the criteria used to the National Register criteria, including how the scope of the inventory differs from that defined by the National Register criteria and how the inventory could be use to identify properties that meet the National Register criteria.

Information Needed to Evaluate Properties: The criteria should be accompanied by a statement defining the minimum information necessary to evaluate properties to insure that this information is collected during identification activities intended to locate specific historic properties. Generally, at least the following will be needed:

1. Adequately developed historic contexts, including identified property types. (See the Guidelines for Preservation Planning for discussion of development of historic contexts.)

2. Sufficient information about the appearance, condition and associative values of the property to be evaluated to:

a. Classify it as to property type;

b. Compare its features or characteristics with those expected for its property type; and

c. Define the physical extent of the property and accurately locate the property.

To facilitate distinguishing between facts and analysis, the information should be divided into categories, including identification and description of pertinent historical contexts; description of the property and its significance in the historical context; and analysis of the integrity of the property relative to that needed to represent the context.

Usually documentation need not include such items as a complete title history or biography of every owner of a property, except where that information is important in evaluating its significance. Information on proposed or potential treatments or threats, such as destruction of a property through uncontrollable natural processes, is also not needed for evaluation, unless those effects are likely to occur prior to or during the evaluation, thereby altering the significant characteristic of the property. If archeological testing or structural analysis is needed for evaluation, it should not proceeded beyond the point of providing the information necessary for evaluation and should not unnecessarily affect significant features or values of the property.

When more information is needed: Evaluation cannot be conducted unless all necessary information is available. (See Information Needed to Evaluate Properties.) Any missing information or analysis should be identified (e.g. development of context or information on the property) as well as the specific activities required to obtain the information (archival research, field survey and testing, or laboratory testing). When adequate information is not available, it is important to record that fact so that evaluation will not be undertaken until the information can be obtained. In some cases needed information is not obtainable, for example, where historical records have been destroyed or analytical techniques have not been developed to date materials in archeological sites. If an evaluation must be completed in these cases, it is important to acknowledge what information was not obtainable and how that missing information may affect the reliability of the evaluation.

Application of the Criteria within a Historic Context

The first step in evaluation is considering how the criteria apply to the

particular historic context. This is done by reviewing the previously developed narrative for the historic context and determining how the criteria would apply to properties in that context, based on the important patterns, events, persons and cultural values identified. (See the discussion of the historic context narrative in the Guidelines for Preservation Planning.) This step includes identification of which criteria each property type might meet and how integrity is to be evaluated for each property type under each criterion. Specific guidelines for evaluating the eligibility of individual properties should be established. These guidelines should outline and justify the specific physical characteristics or data requirements that an individual property must possess to retain integrity for the particular property type; and define the process by which revisions or additions can be made to the evaluation framework.

Consideration of property type and intergrity: After considering how the criteria apply to the particular historic context, the evaluation process for a property generally includes the following steps:

1. A property is classified as to the appropriate historic context(s) and property type(s). If no existing property type is appropriate, a new property type is defined, its values identified, and the specific characteristics or data requirements are outlined and justified as an addition to the historic context. If necessary, a new historic context is defined for which values and property types and their integrity requirements are identified and justified.

2. A comparison is made between the existing information about the property and the integrity characteristics or data required for the property type.

a. If the comparison shows that the property possesses these characteristics, then it is evaluated as significant for that historic context. The evaluation includes a determination that the property retains integrity for its type.

b. If the comparison shows that the property does not meet the minimum requirements, one of several conclusions is reached:

(1) The property is determined not significant because it does not retain the integrity defined for the property type.

(2) The property has characteristics that may make it significant but these differ from those expected for that property type in that context. In this case, the historic context or property types should be reexamined and revised if necessary, based on subsequent research and survey.

The evaluation should state how the particular property meets the integrity requirements for its type. When a property is disqualified for loss of integrity, the evaluation statement should focus on the kinds of integrity expected for the property type, those that are absent for the disqualified property, and the impact of that absence on the property's ability to exemplify architectural, historical or research values within a particular historic context.

The integrity of the property in its current condition, rather than its likely condition after a proposed treatment, should be evaluated. Factors such as structural problems, deterioration, or abandonment should be considered in the evaluation only if they have affected the integrity of the significant features or characteristics of the property.

Inventory

An inventory is a repository of information on specific properties evaluated as significant.

Content: The inventory should include:

1. Summaries of the important historic contexts. These may be in the form of an approved plan or analyses of historic contexts important in the history of the geographical area covered by the inventory.

2. Descriptions of significant property types of these contexts, whether or not any specific properties have been identified.

3. Results of reconnaissance surveys or other identification activities, even if the level of information on specific properties identified as part of those activities is not sufficient to evaluate individual properties.

4. Information on individual properties that was used in evaluation.

Historic contexts are identified by name, with reference to documents describing those contexts, or with a narrative statement about the context(s) where such documents do not exist.

A description of the property. Part of this description may be a photographic record.

A statement that justifies the significance of the property in relation to its context(s). This statement should include an analysis of the integrity of the property.

Boundaries of the property.

A record of when a property was evaluated and included in the inventory, and by whom.

Records on demolished or altered properties and properties evaluated as not significant should be retained, along with full description of areas surveyed, for the planning information these records provide about impacts to properties and about the location and character of non-significant properties to prevent redundant identification work at a later time.

Maintenance: Inventory entries should be maintained so that they accurately represent what is known about historic properties in the area covered by the inventory. This will include new information gained from research and survey about the historic contexts, property types, and previously evaluated properties, as well as information about newly evaluated properties. For individual properties, addition of kinds of significance, change in the boundaries, or loss of significance through demolition or alteration should be recorded.

Uses and Availability: An inventory should be managed so that the information is accessible. Its usefulness depends on the organization of information and on its abilty to incorporate new information. An inventory should be structured so that entries can be retrieved by locality or by historic context.

The availability of the inventory information should be announced or a summary should be distributed. This may be in the form of a list of properties evaluated as significant or a summary of the historic contexts and the kinds of properties in the inventory. Inventories should be avilable to managers, planners, and the general public at local, State, regional, and Federal agency levels.

It is necessary to protect information about archeological sites or other properties whose integrity may be damaged by widespread knowledge of their location. It may also be necessary to protect information on the location of properties such as religious sites, structures, or objects whose cultural value would be compromised by public knowledge of the property's location.

Recommended Sources of Technical Information

How to Apply the National Register Criteria. Available through the National Register Branch, Interagency Resources Division, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Provides detailed technical information about interpretation of the significance and integrity criteria used by the National Register of Historic Places program.

How To Series. Available through the National Register Branch, Interagency Resources Division, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Discusses application of the National Register criteria for evaluation. Titles include:

How To Establish Boundaries for National Register Properties.
How To Evaluate and Nominate Potential National Register Properties That Have Achieved Significance Within the Last 50 Years.
How To Improve Quality of Photos for National Register Nominations.
How To Apply for Certification of Significance Under Section 2124 of the Tax Reform Act of 1976.
How To Apply for Certification of State and Local Statutes and Historic Districts.
How To Quality Historic Properties Under the New Federal Law Affective Easements.

Importance of Small, Surface, and Disturged Sites as Sources of Significant Archeological Data. Valerie Talmage and Olga Chesler. Interagency Archeological Service 1977. Washington, D.C. Available from the National Technical Information Service. NTIS Publication Number PB 270939/AS. Discusses the role of small, surface, and disturbed sites as sources of significant information about a variety of prehistoric activities. These types of sites are frequently ignored in the development of regional archeological research designs.

Secretary of the Interior's Standards For Registration

Registration is the formal recognition of properties evaluated as significant. Preservation benefits provided by various registration programs range from honorific recognition to prohibition of demolition or alteration of included properties. Some registration programs provide recognition and other broad benefits while other programs authorize more specific forms of protection.

Standard I. Registration Is Conducted According To Stated Procedures

Registration of historic properties in the National Register of Historic Places must be done in accordance with the National Register regulations published in the Code of Federal Regulations, 36 CFR 60. Registration for other lists or purposes follow an established process that is understood by the public, particularly by those interests that may be affected by registration.

Standard II. Registration Information Locates, Describes and Justifies the Significance and Physical Integrity of a Historic Property

Registers are used for planning, research and treatment. They must contain adequate information for users to locate a property and understand its significance. Additional information may be appropriate depending on the intended use of the register.

Standard III. Registration Information is Accessible to the Public

Information should be readily available to the public and to government agencies responsible for the preservation of historic properties and for other planning needs.

Secretary of the Interior's Guidelines for Registration

Introduction

These Guidelines link the Standards for Registration with more specific guidance and technical information. They describe one approach to meeting the Standards for Registration. Agencies, organizations, or individuals proposing to approach registration differently may wish to review their approach with the National Park Service.

The Guidelines are organized as follows:

Purpose of Registration Programs
Registration Procedures
Documentation on Registered Properties
Public Availability
Recommended Sources of Technical Information

Purpose of Registration Programs

Registration of historic properties is the formal recognition of properties that have been evaluated as significant according to written criteria. Registration results in an official inventory or list that serves an administrative function. A variety of benefits or forms of protection accure to a registered property, ranging from honorific recognition to prohibition of demolition or alteration.

Some registration programs provide recognition and other broad benefits or entitlements, while other registrations of properties may, in addition, authorize more specific forms of protection. The application of the registration process should be a logical outgrowth of the same planning goals and priorities that guided the identification and evaluation activities. All registration programs should establish priorities for recognition of their authorized range of properties; provide for confidentiality of sensitive information; and establish a means of appealing the registration or non-registration of a property.

Registration Procedures

Explicit procedures are essential because they are the means by which the public can understand and participate in the registration process. Procedures for registration programs should be developed by professionals in the field of historic preservation, in consultation with those who will use or be affected by the program. Prior to taking effect, procedures should be published or circulated for comment at the governmental level at which they will be used. (Procedures for registration of properties in the National Register of Historic Places and the National Historic Landmarks list, for example, are published in the **Federal Register**.)

Any registration program should include:

1. A professional staff to prepare or assess the documentation;
2. A professional review, independent of the nominating source, to provide an impartial evaluation of the documented significance;
3. Adequate notice to property owners, elected officials and the public about proposed registrations and the effects of listing, if any; and
4. A means of public participation.

Professional Review: The registration process should include an independent evaluation of the significance of the property and of the quality and thoroughness of the documentation supporting that significance. Such evaluation ensures that significance is adequately justified and that registration documentation meets the technical requirements of the registration process.

State and local preservation programs, concerned with both public and private properties, generally use a review board, panel or commission. This level of professional review has proven to be effective in assessing the significance of properties considered for registration.

Review boards and other forms of independent review should include professionals in the fields or diciplines included in the criteria; representatives of other fields or disciplines may be desirable to reflect other values or aspects of the register. Key personnel must be qualified by education, training or experience to accomplish their designated duties. (See the Professional Qualifications Standards.)

The scope of the independent review should be clearly stated in the registration procedures and should not include issues outside the scope of the applicable criteria for evaluation and other areas specified in the procedures. Generally, independent reviewers should not be involved in any primary research or analysis related to properties under consideration; this information should be gathered and organized prior to review meetings. Documentation presented to the reviewers should be made available to

the public prior to review meetings or public hearings. Registration of properties should not take place until review of documentation has been completed.

Public Notice: Adequate notice allows property owners, officials and other interested parties to comment on proposed registrations prior to action by the independent reviewers. The degree of protection and control provided by a registration program may be a factor in determining what constitutes adequate notice. For example, adequate notice of proposed inclusion in honorific registers may be less complex than that for registration that results in local controls on alteration or demolition of registered properties.

Notice to elected officials and the public is necessary to distribute information about potential registrations of concern to planning and development interests.

Adequate notice to property owners may be accomplished through means ranging from individual notification by mail to publication of a public notice, depending on the nature of the registration program and the number and character of the properties involved.

Public notices and owner notification about proposed registrations should include the dates and times of public meetings and review meetings, the kinds of comments that are appropriate, and how comments will be considered in the evaluation process. The notice should also state where information can be obtained about the registration program, the criteria used to evaluate properties for inclusion, and the significance of specific properties under consideration.

The procedures should include a means of public participation in the form of submission of written comments or a review meeting open to the public or a public hearing.

The procedures should state time periods within which reviews, notices, comments, public hearings, review meetings and appeals will occur. The time periods should be short enough to allow for efficient recognition of historic properties but also allow adequate time for public comment and participation by those affected. Time periods may vary depending on whether activities are carried out at the local, State, or national level. These time schedules should be widely circulated so that the process is widely understood.

Appeal Process: A means of appeal should be included in the registration process to allow for reconsideration of a property's inclusion. Reasons for appeal may range from existence of additional information about the property supporting or refuting its significance to administrative or procedural error. An appeal process should specify to whom an appeal may be made and how the information that is provided will be evaluated. The appeal procedures should also state the time limit, if any, on appealing a decision and on consideration of information and issuance of a decision by the appeal authority.

Documentation on Registered Properties

Documentation requirements should be carefully weighed to provide the information *actually* needed to reach a registration decision and should be made public. It should be made certain that identification and evaluation activities obtain and record the information necessary for registration. Documentation should be prepared in a standardized format and on materials that are archivally stable and easy to store and retrieve.

Location: The precise location of a historic property must be clearly identified.

Street address, town or vicinity, and county should be provided. Properties should also be located on maps; these may be USGS maps, county planning maps, or city base maps or real estate maps. A uniform system of noting location, such as UTM grid points or longitude and latitude, should supplement mapping. It is recommended that each registration process standardize the preferred choice of maps appropriate to the scope of the process.

Description: An accurate description of a property includes a description of both the current and historical physical appearance and condition of the property and notes the relevant property type(s) for the applicable historic context(s). Discussion should include alterations, deterioration, relocation and other changes to the property since its period of significance.

Significance: A statement of significance should explain why a property meets the criteria for inclusion in the register to which it has been nominated.

This statement should contain at least 3 elements:

1. Reference to the relevant historic context(s);
2. Identification of relevant property types within the context and their characteristics; and
3. Justification that the property under consideration has the characteristics required to qualify it.

Relevant historic contexts can be identified through reference to the preservation plan or other documents where the contexts have been previously described or can be provided by a narrative discussion of the context. (The development of contexts and their use in evaluating properties are discussed in the Guidelines for Preservation Planning and the Guidelines for Evaluation.) A significant property type and its characteristics are identified either through reference to the historic context(s) or by a narrative in the documentation that describes historic contexts. Justification of a specific property is made by systematic comparison of its characteristics to those required for the property type.

Boundaries: The delineation and justification of boundaries for a registered property are important for future treatment activities. It is expecially critical when legal restraints or restrictions may result from the registration of properties. Thus, boundaries should correspond as closely as possible to the actual extent and configuration of the property and should be carefully selected to encompass, but not exceed, the extent of the significant resource(s). The selection of boundaries should reflect the significant aspects of the property.

Arbitrary boundaries should not be chosen for ease of description since this can result in the inclusion of unrelated land or in exclusion of a portion of the historic property. Present property lines should not be chosen as property boundaries without careful analysis of whether they are appropriate to the historic property. A single uniform boundary description and acreage should not be applied to a group or class of properties (antebellum plantations, for example) without examination of the actual extent of each property. The selected boundaries should be justified as appropriate to the historic property.

Boundaries should be clearly and precisely described, using a verbal boundary description, legal description, accurate sketch map, or lines drawn on base maps, or a combination of these where needed to specify the limits of the property being registered. When used, maps should show the location of buildings, structures, sites or objects within the boundary.

Updating Information on Registered Properties: A change in the condition of the significant features of a property may require a change in the official registration record. Alteration of a significant architectural feature, for example, could mean that a property is no longer significant for its architectural design.

Additional significance of registered properties may be identified through development of new historic contexts.

Research may reveal that a property is significant in other historic contexts or is significant at a higher level. For example, a property previously recognized as of local significance could be found to be of national significance.

A change in location or condition of a registered property may mean that the property is no longer significant for the reasons for which it was registered and the property should be deleted from the registered list.

Public Availability

Lists of registered properties should be readily available for public use, and information on registered properties should be distributed on a regular basis. Lists of properties registered nationally are distributed through publication in the Federal Register and to Congressional Offices and State Historic Preservation Offices. Comprehensive information should be stored and maintained for public use at designated national, State and local authorities open to the public on a regular basis.

Information should be retrievable by the property name, and location, historic context or property type. The specific location of properties that may be threatened by dissemination of that information must be withheld. These may include fragile archeological properties or properties such as religious sites, structures, or objects whose cultural value would be compromised by public knowledge of the property location.

Recommended Sources of Technical Information

How to Complete National Register Forms. National Register Division, National Park Service, U.S. Deparment of the Interior, 1977. Washington, D.C. Available through the Superintendent of Documents, US Government Printing Office, Washington, D.C. 20402. GPO Stock Number 024-005-00668-4. This publication is the standard reference on the documentation requirements of the National Register of Historic Places program.

How To Series. Available through the National Register Branch, Interagency Resources Division, National Park Service, Department of the Interior 20240. These information sheets contain supplementary information about interpreting the National Register criteria for evaluation and documentation requirements of the National Register registration program. Title include:

How To Establish Boundaries for National Register Properties.

How To Evaluate and Nominate Potential National Register Properties That Have Achieved Significance Within the Last 50 Years.

How To Improve the Quality of Photographs for National Register Nominations.

How To Apply for Certification of Significance Under Section 2124 of the Tax Reform Act of 1976.

How To Apply for Certification of State and Local Statutes and Historic Districts.

How To Qualify Historic Properties Under the New Federal Law Affecting Easements.

Note on Documentation and Treatment of Historic Properties

Documentation and treatment of historic properties includes a variety of techniques to preserve or protect properties, or to document their historic values and information. While documentation activities may be applied to any potentially historic property, generally only those properties that first have been evaluated as significant against specified criteria (such as those of the National Register) are treated. Some commonly applied treatments are preservation in place, rehabilitation, restoration and stabilization; there are other types of treatments also. Documentation and treatment may be applied to the same property; for example, archeological, historical, and architectural documentation may be prepared before a structure is stabilized or before foundations or chimneys or other lost features are reconstructed.

Alternatives for treatment will usually be available, and care should be applied in choosing among them. Preservation in place is generally preferable to moving a property. Over time, the preferred treatment for a property may change; for example, an archeological site intended for preservation in place may begin to erode so that a combination of archeological documentation and stabilization may be required. If a decision is made that a particular property will not be preserved in place, the need for documentation must then be considered.

The three sets of documentation standards (i.e., the Standards for Historical Documentation, Standards for Architectural and Engineering Documentation, and Standards for Archeological Documentation) as well as the Standards for Historic Preservation Projects (Acquisition, Preservation, Stabilization, Protection, Rehabilitation, Restoration, and Reconstruction) describe the techniques of several disciplines to treat historic properties, and to document or preserve information about their historical values. The integration of planning for documentation and treatment with their execution is accomplished in a statement of objectives, or research design. Because both the goals and appropriate methodologies are likely to be interdisciplinary in nature, the relationship among these various activities should be specified in the research design to ensure that the resulting documentation produces a comprehensive record of historic properties in an efficient manner.

Secretary of the Interior's Standards for Historical Documentation

Historical documentation provides important information related to the significance of a property for use by historians, researchers, preservationists, architects, and historical archeologists. Research is used early in planning to gather information needed to identify and evaluate properties. (These activities are discussed in the Standards and Guidelines for Preservation Planning and the Standards and Guidelines for Identification.) Historical documentation is also a treatment that can be applied in several ways to properties previously evaluated as significant; it may be used in conjunction with other treatment activities (as the basis for rehabilitation plans or interpretive programs, for example) or as a final treatment to preserve information in cases of threatened property destruction. These Standards concern the use of research and documentation as a treatment.

Standard I. Historical Documentation Follows a Research Design That Responds to Needs Identified in the Planning Process

Historical documentation is undertaken to make a detailed record of the significance of a property for research and interpretive purposes and for conservation of information in cases of threatened property destruction. Documentation must have defined objectives so that proposed work may be assessed to determine whether the resulting documentation will meet needs identified in the planning process. The research design or statement of objectives is a formal statement of how the needs identified in the plan are to be addressed in a specific documentation project. This is the framework that guides the selection of methods and evaluation of results, and specifies the relationship of the historical documentation efforts to other proposed treatment activities.

Standards II. Historical Documentation Employs an Appropriate Methodology to Obtain the Information Required by The Research Design

Methods and techniques of historical research should be chosen to obtain needed information in the most efficient way. Techniques should be carefully selected and the sources should be

recorded so that other researchers can verify or locate information discovered during the research.

Standard III. The Results of Historical Documentation Are Assessed Against the Research Design and Integrated Into the Planning Process

Documentation is one product of research; information gatherd about the usefulness of the research design itself is another. The research results are assessed against the research design to determine how well they meet the objectives of the research. The results are integrated into the body of current knowledge and reviewed for their implications for the planning process. The research design is reviewed to determine how future research designs might be modified based on the activity conducted.

Standard IV. The Results of Historical Documentation Are Reported and Made Available to the Public

Research results must be accessible to prospective users. Results should be communicated to the professional community and the public in reports summarizing the documentation activity and identifying the repository of additional detailed information. The goal of disseminating information must be balanced, however, with the need to protect sensitive information whose disclosure might result in damage to properties.

Secretary of the Interior's Guidelines for Historical Documentation

Introduction

These Guidelines link the Standards for Historical Documentation with more specific guidance and technical information. They describe one approach to meeting the Standards for Historical Documentation. Agencies, organizations or individuals proposing to approach historical documentation differently may wish to review their approaches with the National Park Service.

The Guidelines are organized as follows:

Historical Documentation Objectives
Research Design
Methods
Integrating Results
Reporting Results
Recommended Sources of Technical Information

Documentation Objectives

Documentation is a detailed record, in the form of a report or other written document, of the historical context(s) and significance of a property. Historical research to create documentation uses archival materials, oral history techniques, ethnohistories, prior research contained in secondary sources and other sources to make a detailed record of previously identified values or to investigate particular questions about the established significance of a property or properties. It is an investigative technique that may be employed to document associative, architectural, cultural or informational values of properties. It may be used as a component of structural recording or archeological investigation, to enable interpretation or to mitigate the anticipated loss of a property through conservation of information about its historical, architectural or archeological significance. Documentation generally results in both greater factual knowledge about the specific property and its values, and in better understanding of the property in its historical context. In addition to increasing factual knowledge about a property and its significance in one historical context, documentation may also serve to link the property to or define its importance in other known or yet-to-be defined historic contexts.

Documentation should incorporate, rather than duplicate, the findings of previous research. Research may be undertaken to identify how a particular property fits into the work of an architect or builder; to analyze the historical relationship among several properties; or to document in greater detail the historical contexts of properties. The kinds of questions investigated will generally depend on what is already known or understood and what information is needed. For example, documentation of a bridge whose technological significance is well understood, but whose role in local transportation history is not, would summarize the information on the former topic and focus research on the associative values of the property. The questions that research seeks to answer through deed, map or archival search, oral history and other techniques may also relate to issues addressed in structural documentation or archeological investigation; for example, the reasons for and history of modification of a building to be the subject of architectural or engineering documentation.

Research Design

Historical documentation is guided by a statement of objectives, research design or task directive prepared before research is performed. The research design is a useful statement of how proposed work will enhance existing archival data and permits comparison of the proposed work with the results. The purpose of the research design is to define the proposed scope of the documentation work and to define a set of expectations based on the information available prior to the research. Generally, the research design also ensures that research methods are commensurate with the type, quality and source of expected information.

The research design for a property should identify:

1. Evaluated significance of the property(ies) to be investigated;
2. Historical, architectural, archeological or cultural issues relevant to the evaluated significance of the property;
3. Previous research on those issues and how the proposed work is related to existing knowledge;
4. The amount and kinds of information required to produce reliable historical analyses;
5. Methods to be used to obtain the information;
6. Types of sources to be investigated; types of personnel required;
7. Expected results or findings based on available knowledge about the property and its context; and
8. Relationship of the proposed historical documentation to other proposed treatment activities; for example, recommendations on the use of documentation in interpretive programs or other aspects of treatment such as anticipated architectural, engineering or archeological documentation).

Research Methods

Research methods should be chosen based on the information needs, be capable of replication and be recorded so that another researcher could follow the same research procedure. Sources should be recorded so that other researchers can locate or verify the information discovered during the search.

Use of Sources: The variety of available written and graphic materials and the number of individuals that can serve as sources, including but not limited to personal records, deed and title books, newspapers, plats, maps, atlases, photographs, vital records, censuses, historical narratives, interviews of individuals and secondary source materials, should be considered in developing the research design. Part of the development of the research design is deciding what kinds of source materials are most likely to contain needed information and at what point in the research process that information will be most valuable. For example,

often secondary sources are most valuable for gathering background information, while primary sources are more useful to gather or confirm specific facts. The documentation goals may not *require* exhaustive investigation of sources, such as deed records or building permits. Research may be kept cost-effective by making careful decisions about when to use particular sources, thereby limiting the use of time-consuming techniques to when absolutely necessary. Decisions about when to gather information may also affect the quality of information that can be gathered. When dealing with large project areas where loss of many properties is anticipated, it is important to gather information from local archival sources and oral histories before project activities destroy or disperse family or community records and residents.

Analysis of the accuracy and biases of source materials is critical in analyzing the information gathered from these sources. Maps, historical atlases and insurance maps should be assessed like written records for errors, biases and omissions; for example, some map sources may omit structures of a temporary nature or may not fully depict ethnic or minority areas. Likewise, building plans and architectural renderings may not reflect a structure as it was actually built.

Analysis: Analysis should not only focus on the issues defined in the research design, but should also explore major new issues identified during the course of research or analysis. The documentation gathered may raise important issues not previously considered, and further investigation may be important, particularly when contradictory information has been gathered. It is important to examine the implications of these new issues to ensure that they are investigated in a balanced way.

Questions that should be considered in analyzing the information include:

1. Has enough information been gathered to anwser the questions that were posed?

2. Do the answers contradict one another? If so, it may be necessary to search for more evidence. If no additional evidence is available, judgements must be based on the available sources, weighing their biases. Conflicts of source materials should be noted.

In general, the more the researcher knows about the general historical period and setting, and limitations of the source materials under investigation, the better the individual is prepared to evaluate the information found in the documentary sources investigated. Peer review or consultation with other knowledgeable individuals about the information and the tentative conclusions can be an important part of the analysis.

Integrating Results

The results of documentation must be integrated into the planning process so that planning decisions are based on the best available informaiton. The new information is first assessed against the research design to determine whether the gathered information meets the defined objectives of the research. Then the relevant historic contexts, property types, and treatment goals for those contexts are all adjusted, as necessary, based on the historical documentation results.

Reporting Results

Reports should contain:

1. Summaries of the purpose or the documentation, the research design and methods and techniques of investigation.

2. Sources of facts or analyses so that other researchers can locate the information in its original context. Notation of any conflicts in source materials and how the individual performing the documentation interpreted these conflicts.

3. Sources consulted, including those expected to contain useful information and those that contained no information about the property(s).

4. Assessment of the accuracy, biases and historical perspective of all sources. This information and that identified in No. 3 may be provided in an annotated bibliography.

5. Discussion of major analyses and results, including conclusions regarding all major research issues identified in the research design, as well as important issues raised in the course of research. The analysis should be summarized in terms of its impact on interpretating the property's significance and expanding or altering the knowledge about the property and its context.

6. Researchers' interpretation of historical events or trends. These interpretations should be clearly identified.

Primary results should be preserved and made accessible in some manner, although they need not necessarily be contained in the report. At a minimum, the report should reference the location of notes and analyses.

Results of historical documentation should be made available for use in preservation planning and by the general public. Report formats may vary, depending on the audience and the anticipated uses of the documentation, but professionally accepted rules of report writing should be followed. If reports are of a technical nature, the format of the major scientific journal of the pertinent discipline may be the most appropriate format. Peer review of draft reports is one means of ensuring that state-of-the-art technical reports are produced.

Recommended Sources of Technical Information

Folklife and Fieldwork: A Layman's Introduction to Field Techniques. Peter Bartis. American Folklife Center, Washington, D.C., 1979.

Ordinary People and Everyday Life: Perspectives on the New Social History. James B. Gardnee and George Rollie Adams, editors, American Association for State and Local History, Nashville, Tennessee, 1983.

The Process of Field Research. Carl Fleischhauer and Charles K. Wolfe. American Folklife Center, Washington, D.C., 1981.

Researching Heritage Buildings. Margaret Carter. Ministry of the Environment, Ottawa, Canada, 1983.

Secretary of the Interior's Standards for Architectural and Engineering Documentation

These standards concern the development of documentation for historic buildings, sites, structures and objects. This documentation, which usually consists of measured drawings, photographs and written data, provides important information on a property's significance for use by scholars, researchers, preservationists, architects, engineers and others interested in preserving and understanding historic properties. Documentation permits accurate repair or reconstruction of parts of a property, records existing conditions for easements, or may preserve information about a property that is to be demolished.

These Standards are intended for use in developing documentation to be included in the Historic American Building Survey (HABS) and the Historic American Engineering Record (HAER) Collections in the Library of Congress. HABS/HAER, in the National Park Service, have defined specific requirements for meeting these Standards for their collections. The HABS/HAER requirements include information important to development of documentation for other purposes such as State or local archives

Standard I. Documentation Shall Adequately Explicate and Illustrate What is Significant or Valuable About the Historic Building, Site, Structure or Object Being Documented.

The historic significance of the building, site, structure or object identified in the evaluation process should be conveyed by the drawings, photographs and other materials that comprise documentation. The historical, architectural, engineering or cultural values of the property together with the purpose of the documentation activity determine the level and methods of documentation. Documentation prepared for submission to the Library of Congress must meet the HABS/HAER Guidelines.

Standard II. Documentation Shall be Prepared Accurately From Reliable Sources With Limitations Clearly Stated to Permit Independent Verification of the Information.

The purpose of documentation is to preserve an accurate record of historic properties that can be used in research and other preservation activities. To serve these purposes, the documentation must include information that permits assessment of its reliability.

Standard III. Documentation Shall be Prepared on Materials That are Readily Reproductible, Durable and in Standard Sizes.

The size and quality of documentation materials are important factors in the preservation of information for future use. Selection of materials should be based on the length of time expected for storage, the anticipated frequency of use and a size convenient for storage.

Standard IV. Documentation Shall be Clearly and Concisely Produced.

In order for documentation to be useful for future research, written materials must be legible and understandable, and graphic materials must contain scale information and location references.

Secretary of the Interior's Guidelines for Architectural and Engineering Documentation

Introduction

These Guidelines link the Standards for Architectural and Engineering Documentation with more specific guidance and technical information. They describe one approach to meeting the Standards for Architectural Engineering Documentation. Agencies, organizations or individuals proposing to approach documentation differently may wish to review their approaches with the National Park Service.

The Guidelines are organized as follows:

Definitions
Goal of Documentation
The HABS/HAER Collections
Standard I: Content
STandard II: Quality
Standard III: Materials
Standard IV: Presentation
Architectural and Engineering Documentation Prepared for Other Purposes
Recommended Sources of Technical Information

Definitions

These definitions are used in conjunction with these Guidelines:

Architectural Data Form—a one page HABS form intended to provide identifying information for accompanying HABS documentation.

Documentation—measured drawings, photographs, histories, inventory cards or other media that depict historic buildings, sites, structures or objects.

Field Photography—photography, other than large-format photography, intended for the purpose of producing documentation, usually 35mm.

Field Records—notes of measurements taken, field photographs and other recorded information intended for the purpose of producing documentation.

Inventory Card—a one page form which includes written data, a sketched site plan and a 35mm contact print dry-mounted on the form. The negative, with a separate contact sheet and index should be included with the inventory card.

Large Format Photographs—photographs taken of historic buildings, sites, structures or objects where the negative is a 4 X 5", 5 X 7" or 8 X 10" size and where the photograph is taken with appropriate means to correct perspective distortion.

Measured Drawings—drawings produced on HABS or HAER formats depicting existing conditions or other relevant features of historic buildings, sites, structures or objects. Measured drawings are usually produced in ink on archivally stable material, such as mylar.

Photocopy—A photograph, with large-format negative, of a photograph or drawing.

Select Existing Drawings—drawings of historic buildings, sites, structures or objects, whether original construction or later alteration drawings that portray or depict the historic value or significance.

Sketch Plan—a floor plan, generally not to exact scale although often drawn from measurements, where the features are shown in proper relation and proportion to one another.

Goal of Documentation

The Historic American Buildings Survey (HABS) and Historic American Engineering Record (HAER) are the national historical architectural and engineering documentation programs of the National Park Service that promote documentation incorporated into the HABS/HAER collections in the Library of Congress. The goal of the collections is to provide architects, engineers, scholars, and interested members of the public with comprehensive documentation of buildings, sites, structures and objects significant in American history and the growth and development of the built environment.

The HABS/HAER Collections: HABS/HAER documentation usually consists of measured drawings, photographs and written data that provide a detailed record which reflects a property's significance. Measured drawings and properly executed photographs act as a form of insurance against fires and natural disasters by permitting the repair and, if necessary, reconstruction of historic structures damaged by such disasters. Documentation is used to provide the basis for enforcing preservation easement. In addition, documentation is often the last means of preservation of a property; when a property is to be demolished, its documentation provides future researchers access to valuable information that otherwise would be lost.

HABE/HAER documentation is developed in a number of ways. First and most usually, the National Park Service employs summer teams of student architects, engineers, historians and architectural historians to develop HABS/HAER documentation under the supervision of National Park Service professionals. Second, the National Park Service produces HABS/HAER documentation, in conjunction with restoration or other preservation treatment, of historic buildings managed by the National Park Service. Third, Federal agencies, pursuant to Section 110(b) of the National Historic Preservation Act, as amended, record those historic properties to be demolished or substantially altered as a result of agency action or assisted action (referred to as mitigation projects). Fourth, individuals and organizations prepare documentation to HABS/HAER standards and donate that documentation to the HABS/HAER collections. For each of these programs,

different Documentation Levels will be set.

The Standards describe the fundamental principles of HABS/HAER documentation. They are supplemented by other material describing more specific guidelines, such as line weights for drawings, preferred techniques for architectural photography, and formats for written data. This technical information is found in the HABS/HAER Procedures Manual.

These Guidelines include important information about developing documentation for State or local archives. The State Historic Preservation Officer or the State library should be consulted regarding archival requirements if the documentation will become part of their collections. In establishing archives, the important questions of durability and reproducibility should be considered in relation to the purposes of the collection.

Documentation prepared for the purpose of inclusion in the HABS/HAER collections must meet the requirements below. The HABS/HAER office of the National Park Service retains the right to refuse to accept documentation for inclusion in the HABS/HAER collections when that documentation does not meet HABS/HAER requirements, as specified below.

Standard I: Content

1. *Requirement:* Documentation shall adequately explicate and illustrate what is significant or valuable about the historic building, site, structure or object being documented.

2. *Criteria:* Documentation shall meet one of the following documentation levels to be considered adequate for inclusion in the HABS/HAER collections.

a. Documentation Level I:

(1) Drawings: a full set of measured drawings depicting existing or historic conditions.

(2) Photographs: photographs with large-format negatives of exterior and interior views; photocopies with large format negatives of select existing drawings or historic views where available.

(3) Written data: history and description.

b. Documentation Level II:

(1) Drawings: select existing drawings, where available, should be photographed with large-format negatives or photographically reproduced on mylar.

(2) Photographs: photographs with large-format negatives of exterior and interior views, or historic views, where available.

(3) Written data: history and description.

c. Documentation Level III:

(1) Drawings: sketch plan.

(2) Photographs: photographs with large-format negatives of exterior and interior views.

(3) Written data: architectural data form.

d. Documentation Level IV: HABS/HAER inventory card.

3. *Test:* Inspection of the documentation by HABS/HAER staff.

4. *Commentary:* The HABS/HAER office retains the right to refuse to accept any documentation on buildings, site, structures or objects lacking historical significance. Generally, buildings, sites, structures or objects must be listed in, or eligible for listing in the National Register of Historic Places to be considered for inclusion in the HABS/HAER collections.

The kind and amount of documentation should be appropriate to the nature and significance of the buildings, site, structure or object being documented. For example, Documentation Level I would be inappropriate for a building that is a minor element of a historic district, notable only for streetscape context and scale. A full set of measured drawings for such a minor building would be expensive and would add little, if any, information to the HABS/HAER collections. Large format photography (Documentation Level III) would usually be adequate to record the significance of this type of building.

Similarly, the aspect of the property that is being documented should reflect the nature and significance of the building, site, structure or object being documented. For example, measured drawings of Dankmar Adler and Louis Sullivan's Auditorium Building in Chicago should indicate not only facades, floor plans and sections, but also the innovative structural and mechanical systems that were incorporated in that building. Large format photography of Gunston Hall in Fairfax County, Virginia, to take another example, should clearly show William Buckland's hand-carved moldings in the Palladian Room, as well as other views.

HABS/HAER documentation is usually in the form of measured drawings, photographs, and written data. While the criteria in this section have addressed only these media, documentation need not be limited to them. Other media, such as films of industrial processes, can and have been used to document historic buildings, sites, structures or objects. If other media are to be used, the HABS/HAER office should be contacted before recording.

The actual selection of the appropriate documentation level will vary, as discussed above. For mitigation documentation projects, this level will be selected by the National Park Service Regional Office and communicated to the agency responsible for completing the documentation. Generally, Level I documentation is required for nationally significant buildings and structures, defined as National Historic Landmarks and the primary historic units of the National Park Service.

On occasion, factors other than significance will dictate the selection of another level of documentation. For example, if a rehabilitation of a property is planned, the owner may wish to have a full set of as-built drawings, even though the significance may indicate Level II documentation.

HABS Level I measured drawings usually depict existing conditions through the use of a site plan, floor plans, elevations, sections and construction details. HAER Level I measured drawings will frequently depict original conditions where adequate historical material exists, so as to illustrate manufacturing or engineering processes.

Level II documentation differs from Level I by substituting copies of existing drawings, either original or alteration drawings, for recently executed measured drawings. If this is done, the drawings must meet HABS/HAER requirements outlined below. While existing drawings are rarely as suitable as as-built drawings, they are adquate in many cases for documentation purposes. Only when the desirability of having as-built drawings is clear are Level I measured drawings required in addition to existing drawings. If existing drawings are housed in an accessible collection and cared for archivally, their reproduction for HABS/HAER may not be necessary. In other cases, Level I measured drawings are required in the absence of existing drawings.

Level III documentation requires a sketch plan if it helps to explain the structure. The architectural data form should supplement the photographs by explaining what is not readily visible.

Level IV documentation consists of completed HABS/HAER inventory cards. This level of documentation, unlike the other three levels, is rarely considered adequate documentation for the HABS/HAER collections but is undertaken to identify historic resources in a given area prior to additional, more comprehensive documentation.

Standard II: Quality

1. *Requirement:* HABS and HAER documentation shall be prepared accurately from reliable sources with limitations clearly stated to permit independent verification of information.

2. *Criteria:* For all levels of documentation, the following quality standards shall be met:

a. Measured drawings: Measured drawings shall be produced from recorded, accurate measurements. Portions of the building that were not accessible for measurement should not be drawn on the measured drawings, but clearly labeled as not accessible or drawn from available construction drawings and other sources and so identified. No part of the measured drawings shall be produced from hypothesis or non-measurement related activities. Documentation Level I measured drawings shall be accompanied by a set of field notebooks in which the measurements were first recorded. Other drawings, prepared for Documentation Levels II and III, shall include a statement describing where the original drawings are located.

b. Large format photographs: Large format photographs shall clearly depict the appearance of the property and areas of significance of the recorded building, site, structure or object. Each view shall be perspective-corrected and fully captioned.

c. Written history: Written history and description for Documentation Levels I and II shall be based on primary sources to the greatest extent possible. For Levels III and IV, secondary sources may provide adequate information; if not, primary research will be necessary. A frank assessment of the reliability and limitations of sources shall be included. Within the written history, statements shall be footnoted as to their sources, where appropriate. The written data shall include a methodology section specifying name of researcher, date of research, sources searched, and limitations of the project.

3. *Test:* Inspection of the documentation by HABS/HAER staff.

4. *Commentary:* The reliability of the HABS/HAER collections depends on documentation of high quality. Quality is not something that can be easily prescribed or quantified, but it derives from a process in which thoroughness and accuracy play a large part. The principle of independent verification HABS/HAER documentation is critical to the HABS/HAER collections

Standard III: Materials

1. *Requirement:* HABS and HAER documentation shall be prepared on materials that are readily reproducible for ease of access; durable for long storage; and in standard sizes for ease of handling.

2. *Criteria:* For all levels of documentation, the following material standards shall be met:

a. Measured Drawings:

Readily Reproducible: Ink on translucent material.

Durable: Ink on archivally stable materials.

Standard Sizes: Two sizes: 19 × 24" or 24 × 36".

b. Large Format Photographs:

Readily Reproducible: Prints shall accompany all negatives.

Durable: Photography must be archivally processed and stored. Negatives are required on safety film only. Resin-coated paper is not accepted. Color photography is not acceptable.

Standard Sizes: Three sizes: 4 × 5", 5 × 7", 8 × 10".

c. Written History and Description:

Readily Reproducible: Clean copy for xeroxing.

Durable: Archival bond required.

Standard Sizes: 8½ × 11".

d. Field Records:

Readily Reproducible: Field notebooks may be xeroxed. Photo identification sheet will accompany 35 mm negatives and contact sheets.

Durable: No requirement.

Standard Sizes: Only requirement is that they can be made to fit into a 9½ × 12" archival folding file.

3. *Test:* Inspection of the documentation by HABS/HAER staff.

4. *Commentary:* All HABS/HAER records are intended for reproduction; some 20,000 HABS/HAER records are reproduced each year by the Library of Congress. Although field records are not intended for quality reproduction, it is intended that they be used to supplement the formal documentation. The basic durability performance standard for HABS/HAER records is 500 years. Ink on mylar is believed to meet this standard, while color photography, for example, does not. Field records do not meet this archival standard, but are maintained in the HABS/HAER collections as a courtesy to the collection user.

Standard IV: Presentation

1. *Requirement:* HABS and HAER documentation shall be clearly and concisely produced.

2. *Criteria:* For levels of documentation as indicated below, the following standards for presentation will be used:

a. Measured Drawings: Level I measured drawings will be lettered mechanically (i.e., Leroy or similar) or in a handprinted equivalent style. Adequate dimensions shall be included on all sheets. Level III sketch plans should be neat and orderly.

b. Large format photographs: Level I photographs shall include duplicate photographs that include a scale. Level II and III photographs shall include, at a minimum, at least one photograph with a scale, usually of the principal facade

c. Written history and description: Data shall be typewritten on bond, following accepted rules of grammar.

3. *Test:* Inspection of the documentation by HABS/HAER staff.

Architectural and Engineering Documentation Prepared for Other Purposes

Where a preservation planning process is in use, architectural and engineering documentation, like other treatment activities, are undertaken to achieve the goals identified by the preservation planning process. Documentation is deliberately selected as a treatment for properties evaluated as significant, and the development of the documentation program for a property follows from the planning objectives. Documentation efforts focus on the significant characteristics of the property, as defined in the previously completed evaluation. The selection of a level of documentation and the documentation techniques (measured drawings, photography, etc.) is based on the significance of the property and the management needs for which the documentation is being performed. For example, the kind and level of documentation required to record a historic property for easement purposes may be less detailed than that required as mitigation prior to destruction of the property. In the former case, essential documentation might be limited to the portions of the property controlled by the easement, for example, exterior facades; while in the latter case, significant interior architectural features and non-visible structural details would also be documented.

The principles and content of the HABS/HAER criteria may be used for guidance in creating documentation requirements for other archives. Levels of documentation and the durability and sizes of documentation may vary depending on the intended use and the repository. Accuracy of documentation should be controlled by assessing the reliability of all sources and making that assessment available in the archival record; by describing the limitations of the information available from research and physical examination of the

property; and by retaining the primary data (field measurements and notebooks) from which the archival record was produced. Usefulness of the documentation products depends on preparing the documentation on durable materials that are able to withstand handling and reproduction, and in sizes that can be stored and reproduced without damage.

Recommended Sources of Technical Information

Recording Historic Buildings. Harley J. McKee. Government Printing Office, 1970. Washington, D.C. Available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. GPO number 024-005-0235-9.

HABS/HAER Procedures Manual. Historic American Buildings Survey/Historic American Engineering Record, National Park Service, 1980. Washington, D.C.

Photogrammetric Recording of Cultural Resources. Perry E. Borchers. Technical Preservation Services, U.S. Department of the Interior, 1977. Washinton, D.C.

Rectified Photography and Photo Drawings for Historic Preservation. J. Henry Chambers. Technical Preservation Services, U.S. Department of the Interior, 1975. Washington, D.C.

Secretary of the Interior's Standards for Archeological Documentation

Archeological documentation is a series of actions applied to properties of archeological interest. Documentation of such properties may occur at any or all levels of planning, identification, evaluation or treatment. The nature and level of documentation is dictated by each specific set of circumstances. Archeological documentation consists of activities such as archival research, observation and recording of above-ground remains, and observation (directly, through excavation, or indirectly, through remote sensing) of below-ground remains. Archeological documentation is employed for the purpose of gathering information on individual historic properties or groups of properties. It is guided by a framework of objectives and methods derived from the planning process, and makes use of previous planning decisions, such as those on evaluation of significance. Archeological documentation may be undertaken as an aid to various treatment activities, including research, interpretation, reconstruction, stabilization and data recovery when mitigating archeological losses resulting from construction. Care should be taken to assure that documentation efforts do not duplicate previous efforts.

Standard I. Archeological Documentation Activities Follow an Explicit Statement of Objectives and Methods That Responds to Needs Identified in the Planning Process

Archeological research and documentation may be undertaken to fulfill a number of needs, such as overviews and background studies for planning, interpretation or data recovery to mitigate adverse effects. The planning needs are articulated in a statement of objectives to be accomplished by the archeological documentation activities. The statement of objectives guides the selection of methods and techniques of study and provides a comparative framework for evaluating and deciding the relative efficiency of alternatives. Satisfactory documentation involves the use of archeological and historical sources, as well as those of other disciplines. The statement of objectives usually takes the form of a formal and explicit research design which has evolved from the interrelation of planning needs, current knowledge, resource value and logistics.

Standard II. The Methods and Techniques of Archeological Documentation are Selected To Obtain the Information Required by the Statement of Objectives

The methods and techniques chosen for archeological documentation should be the most effective, least destructive, most efficient and economical means of obtaining the needed information. Methods and techniques should be selected so that the results may be verified if necessary. Non-destructive techniques should be used whenever appropriate. The focus on stated objectives should be maintained throughout the process of study and documentation.

Standard III. The Results of Archeological Documentation are Assessed Against the Statement of Objectives and Integrated Into the Planning Process

One product of archeological documentation is the recovered data; another is the information gathered about the usefulness of the statement of objectives itself. The recovered data are assessed against the objectives to determine how they meet the specified planning needs. Information related to archeological site types, distribution and density should be integrated in planning at the level of identification and evaluation. Information and data concerning intra-site structure may be needed for developing mitigation strategies and are appropriately integrated at this level of planning. The results of the data analyses are integrated into the body of current knowledge. The utility of the method of approach and the particular techniques which were used in the investigation (i.e. the research design) should be assessed so that the objectives of future documentation efforts may be modified accordingly.

Standard IV. The Results of Archeological Documentation are Reported and Made Available to the Public

Results must be accessible to a broad range of users including appropriate agencies, the professional community and the general public. Results should be communicated in reports that summarize the objectives, methods, techniques and results of the documentation activity, and identify the repository of the materials and information so that additional detailed information can be obtained, if necessary. The public may also benefit from the knowledge obtained from archeological documentation through pamphlets, brochures, leaflets, displays and exhibits, or by slide, film or multi-media productions. The goal of disseminating information must be balanced, however, with the need to protect sensitive information whose disclosure might result in damage to properties. Curation arrangements sufficient to preserve artifacts, specimens and records generated by the investigation must be provided for to assure the availability of these materials for future use.

Secretary of the Interior's Guidelines for Archeological Documentation

Introduction

These Guidelines link the Standards for Archeological Documentation with more specific guidance and technical information. They describe one approach to meeting the Standards for Documentation. Agencies, organizations or individuals proposing to approach archeological documentation differently may wish to review their approach with the National Park Service.

The Guidelines are organized as follows:

Archeological Documentation Objectives
Documentation Plan
Methods
Reporting Results
Curation
Recommended Sources of Technical Information

1. Collection of base-line data;

2. Problem-oriented research directed toward particular data gaps recognized in the historic context(s);

3. Preservation or illustration of significance which has been identified for treatment by the planning process; or

4. Testing of new investigative or conservation techniques, such as the effect of different actions such as forms of site burial (aqueous or non-aqueous).

Many properties having archeological components have associative values as well as research values. Examples include Native American sacred areas and historic sites such as battlefields. Archeological documentation may preserve information or data that are linked to the identified values that a particular property possesses. Depending on the property type and the range of values represented by the property, it may be necessary to recover information that relates to an aspect of the property's significance other than the specified research questions. It is possible that conflicts may arise between the optimal realizations of research goals and other issues such as the recognition/protection of other types of associative values. The research design for the archeological documentation should provide for methods and procedures to resolve such conflicts, and for the close coordination of the archeological research with the appropriate ethnographic, social or technological research.

Archeological Documentation Objectives

The term "archeological documentation" is used here to refer specifically to any operation that is performed using archeological techniques as a means to obtain and record evidence about past human activity that is of importance to documenting history and prehistory in the United States. Historic and prehistoric properties may be important for the data they contain, or because of their association with important persons, events, or processes, or because they represent architectural or artistic values, or for other reasons. Archeological documentation may be an appropriate option for application not only to archeological properties, but to above-ground structures as well, and may be used in collaboration with a wide range of other treatment activities.

If a property contains artifacts, features, and other materials that can be studied using archeological techniques, then archeological documentation may be selected to achieve particular goals of the planning process—such as to address a specified information need, or to illustrate significant associative values. Within the overall goals and priorities established by the planning process, particular methods of investigation are chosen that best suit the types of study to be performed.

Relationship of archeological documentation to other types of documentation or other treatments: Archeological documentation is appropriate for achieving any of various goals, including:

Documentation Plan

Research Design: Archeological documentation can be carried out only after defining explicit goals and a methodology for reaching them. The goals of the documentation effort directly reflect the goals of the preservation plan and the specific needs identified for the relevant historic contexts. In the case of problem oriented archeological research, the plan usually takes the form of a formal research design, and includes, in addition to the items below, explicit statements of the problem to be addressed and the methods or tests to be applied. The purpose of the statement of objectives is to explain the rationale behind the documentation effort; to define the scope of the investigation; to identify the methods, techniques, and procedures to be used; to provide a schedule for the activities; and to permit comparison of the proposed research with the results. The research design for an archeological documentation effort follows the same guidelines as those for identification (see the Guidelines for Identification) but has a more property-specific orientation.

The research design should draw upon the preservation plan to identify:

1. Evaluated significance of the property(ies) to be studied;

2. Research problems or other issues relevant to the significance of the property;

3. Prior research on the topic and property type; and how the proposed documentation objectives are related to previous research and existing knowledge;

4. The amount and kinds of information (data) required to address the documentation objectives and to make reliable statements, including at what point information is redundant and documentation efforts have reached a point of diminishing returns;

5. Methods to be used to find the information; and

6. Relationship of the proposed archeological investigation to anticipated historical or structural documentation, or other treatments.

The primary focus of archeological documentation is on the data classes that are required to address the specified documentation objectives. This may mean that other data classes are deliberately neglected. If so, the reasons for such a decision should be carefully justified in terms of the preservation plan.

Archeological investigations seldom are able to collect and record all possible data. It is essental to determine the point at which further data recovery and documentation fail to improve the usefulness of the archeological information being recovered. One purpose of the research design is to estimate those limits in advance and to suggest at what point information becomes duplicative. Investigation strategies should be selected based on these general principles, considering the following factors:

1. Specific data needs;

2. Time and funds available to secure the data; and

3. Relative cost efficiency of various strategies.

Responsiveness to the concerns of local groups (e.g., Native American groups with ties to specific properties) that was built into survey and evaluation phases of the preservation plan, should be maintained in archeological investigation, since such activity usually involves site disturbance. The research design, in addition to providing for appropriate ethnographic research and consultation, should consider concerns voiced in previous phases. In the absence of previous efforts to coordinate with local or other interested groups, the research design should anticipate the need to initiate appropriate contracts and provide a mechanism for responding to sensitive issues, such as the possible uncovering of human remains or discovery of sacred areas.

The research design facilitates an orderly, goal directed and economical project. However, the research design must be flexible enough to allow for examination of unanticipated but important research opportunities that arise during the investigation.

Documentation Methods

Background Review: Archeological documentation usually is preceded by, or integrated with historical research (i.e. that intensive background information gathering including identification of previous archeological work and inspection of museum collections; gathering relevant data on geology, botany, urban geography and other related disciplines; archival research; informant interviews, or recording of oral tradition, etc.).

Depending on the goals of the archeological documentation, the background historical and archeological research may exceed the level of research accomplished for development of the relevant historic contexts or for identification and evaluation, and focuses on the unique aspects of the property to be treated. This assists in directing the investigation and locates a broader base of information than that contained in the property itself for response to the documentation goals. This activity is particularly important for historic archeological properties where information sources other than the property itself may be critical to preserving the significant aspects of the property. (See the Secretary of the Interior's Standards and Guidelines for Historical Documentation for discussion of associated research activities.)

Field Studies: The implementation of the research design in the field must be flexible enough to accommodate the discovery of new or unexpected data classes or properties, or changing field conditions. A phased approach may be appropriated when dealing with large complex properties or groups of properties, allowing for changes in emphasis or field strategy, or termination of the program, based on analysis of recovered data at the end of each phase. Such an approach permits the confirmation of assumptions concerning property extent, content or organization which had been made based on data gathered from identification and evaluation efforts, or the adjustment of those expectations and resulting changes in procedure. In some cases a phased approach may be necessary to gather sufficient data to calculate the necessary sample size for a statistically valid sample. A phased documentation program may often be most cost-effective, in allowing for early termination of work if the desired objectives cannot be achieved.

Explicit descriptive statements of and justification for field study techniques are important to provide a means of evaluating results. In some cases, especially those employing a sampling strategy in earlier phases (such as identification or evaluation), it is possible to estimate parameters of certain classes of data in a fairly rigorous statistical manner. It is thus desirable to maintain some consistency in choice of sampling designs throughout multiple phases of work at the same property. Consistency with previously employed areal sampling frameworks also improves potential replication in terms of later locating sampled and unsampled areas. It often is desirable to estimate the nature and frequency of data parameters based on existing information or analogy to other similar cases. These estimates may then be tested in field studies.

An important consideration in choosing methods to be used in the field studies should be assuring full, clear, and accurate descriptions of all field operations and observations, including excavation and recording techniques and stratigraphic or inter-site relationships.

To the extent feasible, chosen methodologies and techniques should take into account the possibility that future researchers will need to use the recovered data to address problems not recognized at the time the data were recovered. The field operation may recover data that may not be fully analyzed; this data, as well as the data analyzed, should be recorded and preserved in a way to facilitate future research.

A variety of methodologies may be used. Choices must be explained, including a measure of cost-effectiveness relative to other potential choices. Actual results can then be measured against expectations, and the information applied later in similar cases.

Destructive methods should not be applied to portions or elements of the property if nondestructive methods are practical. If portions or elements of the property being documented are to be preserved in place, the archeological investigation should employ methods that will leave the property as undisturbed as possible. However, in cases where the property will be destroyed by, for example, construction following the investigation, it may be most practical to gather the needed data in the most direct manner, even though that may involve use of destructive techniques.

Logistics in the field, including the deployment of personnel and materials and the execution of sampling strategies, should consider site significant, anticipated location of most important data, cost effectiveness, potential time limitations and possible adverse environmental conditions.

The choice of methods for recording data gathered in the field should be based on the research design. Based on that statement, it is known in advance of field work what kinds of information are needed for analysis; record-keeping techniques should focus on these data. Field records should be maintained in a manner that permits independent interpretation in so far as possible. Record-keeping should be standardized in format and level of detail.

Archeological documentation should be conducted under the supervision of qualified professionals in the disciplines appropriate to the data that are to be recovered. When the general public is directly involved in archeological documentation activities, provision should be made for training and supervision by qualified professionals. (See the Professional Qualifications Standards.)

Analysis: Archeological documentation is not completed with field work; analysis of the collected information is an integral part of the documentation activity, and should be planned for in the research design. Analytical techniques should be selected that are relevant to the objectives of the investigation. Forms of analysis that may be appropriate, depending on the type of data recovered and the objectives of the investigation, include but are not limited to: studying artifact types and distribution; radiometric and other means of age determination; studies of soil stratigraphy; studies of organic matter such as human remains, pollen, animal bones, shells and seeds; study of the composition of soils and study of the natural environment in which the property appears.

Reporting Results

Report Contents: Archeological documentation concludes with written report(s) including minimally the following topics:

1. Description of the study area;
2. Relevant historical documentation/background research;
3. The research design;
4. The field studies as actually implemented, including any deviation from the research design and the reason for the changes;
5. All field observations;
6. Analyses and results, illustrated as appropriate with tables, charts, and graphs;
7. Evaluation of the investigation in terms of the goals and objectives of the investigation, including discussion of how well the needs dictated by the planning process were served;
8. Recommendations for updating the relevant historic contexts and planning goals and priorities, and generation of new or revised information needs;
9. Reference to related on-going or proposed treatment activities, such as structural documentation, stabilization, etc.; and

10. Information on the location of original data in the form of field notes, photographs, and other materials.

Some individual property information, such as specific locational data, may be highly sensitive to disclosure, because of the threat of vandalism. If the objectives of the documentation effort are such that a report containing confidential information such as specific site locations or information on religious practices is necessary, it may be appropriate to prepare a separate report for public distribution. The additional report should summarize that information that is not under restricted access in a format most useful to the expected groups of potential users. Peer review of draft reports is recommended to ensure that state-of-the-art technical reports are produced.

Availability: Results must be made available to the full range of potential users. This can be accomplished through a variety of means including publication of results in monographs and professionals journals and distribution of the report to libraries or technical clearinghouses such as the National Technical Information Service in Springfield, Virginia.

Curation

Archeological specimens and records are part of the documentary record of an archeological site. They must be curated for future use in research, interpretation, preservation, and resource management activities. Curation of important archeological specimens and records should be provided for in the development of any archeological program or project.

Archeological specimens and records that should be curated are those that embody the information important to history and prehistory. They include artifacts and their associated documents, photographs, maps, and field notes; materials of an environmental nature such as bones, shells, soil and sediment samples, wood, seeds, pollen, and their associated records; and the products and associated records of laboratory procedures such as thin sections, and sediment fractions that result from the analysis of archeological data.

Satisfactory curation occurs when:

1. Curation facilities have adequate space, facilities, and professional personnel;

2. Archeological specimens are maintained so that their information values are not lost through deterioration, and records are maintained to a professional archival standard;

3. Curated collections are accessible to qualified researchers within a reasonable time of having been requested; and

4. Collections are available for interpretive purposes, subject to reasonable security precautions.

Recommended Sources of Technical Information

Archeomagnetism: A Handbook for the Archeologist. Jeffrey L. Eighmy, U.S. Department of the Interior, Washington, D.C., 1980.

The Curation and Management of Archeological Collections: A Pilot Study. Cultural Resource Management Series, U.S. Department of the Interior, September 1980.

Human Bones and Archeology. Douglas H. Ubelaker. Interagency Archeological Services, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, D.C., 1980. Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Manual for Museums. Ralph H. Lewis, National Park Service, U.S. Department of the Interior, 1976.

Treatment of Archeological Properties: A Handbook. Advisory Council on Historic Preservation, Washington D.C., 1980.

Secretary of the Interior's Standards for Historic Preservation Projects

General Standards for Historic Preservation Projects

The following general standards apply to all treatments undertaken on historic properties listed in the National Register.

1. Every reasonable effort shall be made to provide a compatible use for a property that requires minimal alteration of the building, structure, or site and its environment, or to use a property for its originally intended purpose.

2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

3. All buildings, structures, and sites shall be recognized as products of their own time. Alterations which have no historical basis and which seek to create an earlier appearance shall be discouraged.

4. Changes which have taken place in the course of time are evidence of the history and development of a building, structure, or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.

5. Distinctive architectural features or examples of skilled craftsmanship which characterize a building, structure, or site shall be treated with sensitivity.

6. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical, or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other buildings or structures.

7. The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.

8. Every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any acquisition, stabilization, preservation, rehabilitation, restoration, or reconstruction project.

Specific Standards for Historic Preservation Projects

The following specific standards for each treatment are to be used in conjunction with the eight general standards and, in each case, begin with number 9. For example, in evaluating acquisition projects, include the eight general standards plus the four specific standards listed under standards for Acquisition. The specific standards differ from those published for use in Historic Preservation Fund grant-in-aid projects (36 CFR Part 68) in that they discuss more fully the treatment of archeological properties.

Standards for Acquisition

9. Careful consideration shall be given to the type and extent of property rights which are required to assure the preservation of the historic resource. The preservation objectives shall determine the exact property rights to be acquired.

10. Properties shall be acquired in fee simple when absolute ownership is required to insure their preservation.

11. The purchase of less-than-fee-simple interests, such as open space or facade easements, shall undertaken when a limited interest achieves the preservation objective.

12. Every reasonable effort shall be made to acquire sufficient property with the historic resource to protect its historical, archeological, architectural or cultural significance.

Standard for Protection

9. Before applying protective measures which are generally of a temporary nature and imply future historic preservation work, an analysis of the actual or anticipated threats to the property shall be made.

10. Protection shall safeguard the physical condition or environment of a property or archeological site from further deterioration or damage caused by weather or other natural, animal, or human intrusions.

11. If any historic material or architectural features are removed, they shall be properly recorded and, if possible, stored for future study or reuse.

Standards for Stabilization

9. Stabilization shall reestablish the structural stability of a property through the reinforcement of loadbearing members or by arresting deterioration leading to structural failure. Stabilization shall also reestablish weather resistant conditions for a property.

10. Stabilization shall be accomplished in such a manner that it detracts as little as possible from the property's appearance and significance. When reinforcement is required to reestablish structural stability, such work shall be concealed wherever possible so as not to intrude upon or detract from the aesthetic and historical or archeological quality of the property, except where concealment would result in the alteration or destruction of historically or archeologically significant material or spaces. Accurate documentation of stabilization procedures shall be kept and made available for future needs.

11. Stabilization work that will result in ground disturbance shall be preceded by sufficient archeological investigation to determine whether significant subsurface features or artifacts will be affected. Recovery, curation and documentation of archeological features and specimens shall be undertaken in accordance with appropriate professional methods and techniques.

Standards for Preservation

9. Preservation shall maintain the existing form, integrity, and materials of a building, structure, or site. Archeological sites shall be preserved undisturbed whenever feasible and practical. Substantial reconstruction or restoration of lost features generally are not included in a preservation undertaking.

10. Preservation shall include techniques of arresting or retarding the deterioration of a property through a program of ongoing maintenance.

11. Use of destructive techniques, such as archeological excavation, shall be limited to providing sufficient information for research, interpretation and management needs.

Standards for Rehabilitation

9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historic, architectural, or cultural material and such design is compatible with the size, scale, color, material, and character of the property, neighborhood, or environment.

10. Wherever possible, new additions or alterations to structures shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.

Standards for Restoration

9. Every reasonable effort shall be made to use a property for is originally intended purpose or to provide a compatible use that will require minimum alteration to the property and its environment.

10. Reinforcement required for structural stability or the installation of protective or code required mechanical systems shall be concealed wherever possible so as not to intrude or detract from the property's aesthetic and historical qualities, except where concealment would result in the alteration or destruction of historically significant materials or spaces.

11. Restoration work such as the demolition of non-contributing additions that will result in ground or structural disturbance shall be preceded by sufficient archeological investigation to determine whether significant subsurface or structural features or artifacts will be affected. Recovery, curation and documentation of archeological features and specimens shall be undertaken in accordance with appropriate professional methods and techniques.

Standards for Reconstruction

9. Reconstruction of a part or all of a property shall be undertaken only when such work is essential to reproduce a significant missing feature in a historic district or scene, and when a contemporary design solution is not acceptable. Reconstruction of archeological sites generally is not appropriate.

10. Reconstruction of all or a part of a historic property shall be appropriate when the reconstruction is essential for understanding and interpreting the value of a historic district, or when no other building, structure, object, or landscape feature with the same associative value has survived and sufficient historical or archeological documentation exists to insure an accurate reproduction of the original.

11. The reproduction of missing elements accomplished with new materials shall duplicate the composition, design, color, texture, and other visual qualities of the missing element. Reconstruction of missing architectural or archeological features shall be based upon accurate duplication of original features substantiated by physical or documentary evidence rather than upon conjectural designs or the availability of different architectural features from other buildings.

12. Reconstruction of a building or structure on an original site shall be preceded by a thorough archeological investigation to locate and identify all subsurface features and artifacts. Recovery, curation and documentation of archeological features and specimens shall be undertaken in accordance with professional methods and techniques.

13. Reconstruction shall include measures to preserve any remaining original fabric, including foundations, subsurface, and ancillary elements. The reconstruction of missing elements. The reconstruction of missing elements and features shall be done in such a manner that the essential form and integrity of the original surviving features are unimpaired.

Secretary of the Interior Guidelines for Historic Preservation Projects

The guidelines for the Secretary of the Interior's Standards for Historic Preservation Projects, not included here because of their length, may be obtained separately from the National Park Serivce.

Professional Qualifications Standards

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 fulltime 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, historic 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 historic in 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.

Preservation Terminology

Acquisition—the act or process of acquiring fee title or interest other than fee title of real property (including acquisition of development rights or remainder interest).

Comprehensive Historic Preservation Planning—the organization into a logical sequence of preservation information pertaining to identification, evaluation, registration and treatment of historic properties, and setting priorities for accomplishing preservation activities.

Historic Context—a unit created for planning purposes that groups information about historic properties based on a shared theme, specific time period and geographical area.

Historic Property—a district, site, building, structure or object significant in American history, architecture, engineering, archeology or culture at the national, State, or local level.

Integrity—the authenticity of a property's historic identity, evidenced by the survival of physical characteristics that existed during the property's historic or prehistoric period.

Intensive Survey—a systematic, detailed examination of an area designed to gather information about historic properties sufficient to evaluate them against predetermined criteria of significance within specific historic contexts.

Inventory—a list of historic properties determined to meet specified criteria of significance.

National Register Criteria—the established criteria for evaluating the eligibility of properties for inclusion in the National Register of Historic Places.

Preservation (treatment)—the act or process of applying measures to sustain the existing form, integrity and material of a building or structure, and the existing form and vegetative cover of a site. It may include initial stabilization work, where necessary, as well as ongoing maintenance of the historic building materials.

Property Type—a grouping of individual properties based on a set of shared physical or associative characteristics.

Protection (treatment)—the act or process of applying measures designed to affect the physical condition of a property by defending or guarding it from deterioration, loss or attack, or to cover or shield the property from danger or injury. In the case of buildings and structures, such treatment is generally of a temporary nature and anticipates future historic preservation treatment; in the case of archeological sites, the protective measure may be temporary or permanent.

Reconnaissance Survey—an examination of all or part of an area accomplished in sufficient detail to make generalizations about the types and distributions of historic properties that may be present.

Reconstruction (treatment)—the act or process of reproducing by new construction the exact form and detail of a vanished building, structure, or object, or any part thereof, as it appeared at a specific period of time.

Rehabilitation (treatment)—the act or process of returning a property to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the property which are significant to its historical, architectural and cultural values.

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.

Restoration—the act or process of accurately recovering the form and details of a property and its setting as it appeared at a particular period of time

by means of the removal of later work or by the replacement of missing earlier work.

Sample Survey—survey of a representative sample of lands within a given area in order to generate or test predictions about the types and distributions of historic properties in the entire area.

Stabilization (treatment)—the act or process of applying measures designed to reestablish a weather resistant enclosure and the structural stability of an unsafe or deteriorated property while maintaining the essential form as it exists at present.

Statement of objectives—see Research design.

Dated: September 26, 1983.

Russell E. Dickenson,

Director, National Park Service.

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Errata Sheet

ARCHEOLOGY AND HISTORIC PRESERVATION; SECRETARY OF THE INTERIOR'S STANDARDS AND GUIDELINES

FEDERAL REGISTER, Vol. 48, No. 190, Part IV.

In the Guidelines for Archeological Documentation, the section titled "Archeological Documentation Objectives" was published out of sequence. The correct order of the material on pages 44734 and 44735 is as follows:

Secretary of the Interior's Guidelines for Archeological Documentation

Introduction

These Guidelines link the Standards for Archeological Documentation with more specific guidance and technical information. They describe one approach to meeting the Standards for Documentation. Agencies, organizations or individuals proposing to approach archeological documentation differently may wish to review their approach with the National Park Service.

Guidelines are organized as follows:

Archeological Documentation Objectives
Documentation Plan
Methods
Reporting Results
Curation
Recommended Sources of Technical Information

Archeological Documentation Objectives

The term "archeological documentation" is used here to refer specifically to any operation that is performed using archeological techniques as a means to obtain and record evidence about past human activity that is of importance to documenting history and prehistory in the United States. Historic and prehistoric properties may be important for the data they contain, or because of their association with important persons, events, or processes, or because they represent architectural or artistic values, or for other reasons. Archeological documentation may be an appropriate option for application not only to archeological properties, but to above-ground structures as well, and may be used in collaboration with a wide range of other treatment activities.

If a property contains artifacts, features, and other materials that can be studied using archeological techniques, then archeological documentation may be selected to achieve particular goals of the planning process—such as to address a specified information need, or to illustrate significant associative values. Within the overall goals and priorities established by the planning process, particular methods of investigation are chosen that best suit the types of study to be performed.

Relationship of archeological documentation to other types of documentation or other treatments: Archeological documentation is appropriate for achieving any of various goals, including:

1. Collection of base-line data;
2. Problem-oriented research directed toward particular data gaps recognized in the historic context(s);
3. Preservation or illustration of significance which has been identified for treatment by the planning process; or
4. Testing of new investigative or conservation techniques, such as the effect of different actions such as forms of site burial (aqueous or non-aqueous).

Many properties having archeological components have associative values as well as research values. Examples include Native American sacred areas and historic sites such as battlefields. Archeological documentation may preserve information or data that are linked to the identified values that a particular property possesses. Depending on the property type and the range of values represented by the property, it may be necessary to recover information that relates to an aspect of the property's significance other than the specified research questions. It is possible that conflicts may arise between the optimal realizations of research goals and other issues such as the recognition/protection of other type of associative values. The research design for the archeological documentation should provide for methods and procedures to resolve such conflicts, and for the close coordination of the archeological research with the appropriate ethnographic, social or technological research.

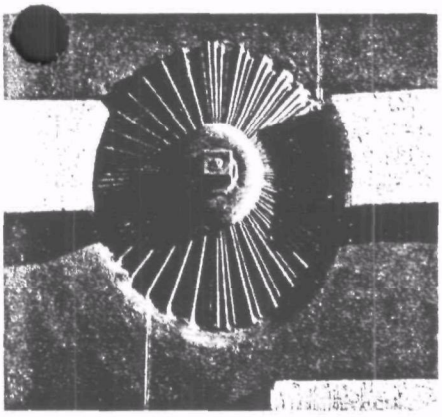
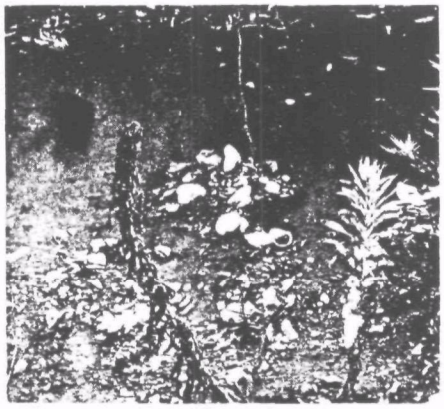
Documentation Plan

Attachment 4

ATTACHMENT #4

WORKING WITH
SECTION 106

IDENTIFICATION OF HISTORIC PROPERTIES:
A Decisionmaking Guide for Managers

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Tie rod, the U.S. Mint, New Orleans. (Marcia Artmann Smith, photographer.)

Eroding midden, Swansboro, North Carolina, archeological site. (Photo courtesy of the U.S. Army Corps of Engineers.)

Columbia River Highway, Oregon, listed on the National Register of Historic Places in 1983. (Photograph courtesy of Oregon Department of Transportation/James Norman, photographer.)

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Preface

Identification is a key part of any program of historic preservation. Without identification, historic properties cannot be thoughtfully preserved, rehabilitated, or considered in planning modern programs of development and land use.

Over the years, a number of publications have been issued dealing with the processes and results of identification. Notable among these are *Secretary of the Interior's Standards and Guidelines for Identification* and the more detailed *Guidelines for Local Surveys: A Basis for Preservation Planning* and *The Archeological Survey: Methods and Uses*, all published by the Department of the Interior.

Questions continue to arise, however, about how one decides to carry out a program of identification, and what approaches to use. This publication is designed to answer these questions, thus filling an important gap in the identification literature.

The Advisory Council on Historic Preservation and others first perceived a need for this publication during the process of revising the Council's regulations, "Protection of Historic Properties" [36 CFR Part 800], which implement Section 106 of the National Historic Preservation Act of 1966 (NHPA).

Once the regulatory revisions were complete, the Council turned its attention to developing this and other guideline documents needed to make the Section 106 review process work more smoothly. The National Park Service, recognizing that this guidance would have applications well beyond Section 106 review, participated actively in its development; the two agencies d[illegible]d that its joint issuance would be appropriate.

This publication was developed under the supervision of a task force of Council members headed by Janice S. Golec, deputy assistant secretary for program development, Department of Housing and Urban Development (HUD). Members of the task force, in addition to the Department of the Interior and HUD, included the Honorable Michael Newbold Castle, governor of Delaware; Bruce Nestande, citizen member of the Council from Costa Mesa, California; Clifton Caldwell, historic preservation expert member of the Council from Richardson, Texas; and Avery C. Faulkner, FAIA, historic preservation expert member from Washington, DC. The primary author of this publication is Thomas F. King, Ph.D., director of the Council's Office of Cultural Resource Preservation. Major drafting assistance was provided by James Brennan, director, Environmental Management Division, Office of Environment and Energy, HUD, and Dale Lanzone, former special assistant to the director, National Park Service, Department of the Interior, and now director of arts and historic preservation, General Services Administration.

It is our hope that this publication will be widely used not only in helping Federal agencies and others carry out their identification responsibilities under Section 106, but also in conducting historic preservation programs at all levels of government and in the private sector.

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IDENTIFICATION OF HISTORIC PROPERTIES:
A Decisionmaking Guide for Managers

I. Introduction

The National Historic Preservation Act (NHPA), other Federal authorities, and a growing number of State and local laws, ordinances, and policies require or encourage the consideration of historic properties in the planning and implementation of land use and development projects. In order for such consideration to occur, historic properties **must be identified**, preferably at an early planning stage, and in an orderly manner.

What Section 106 requires of Federal agencies

Section 106 of NHPA requires that Federal agencies take into account the effects of their undertakings on historic properties. Procedures for complying with Section 106 are set forth in the Council's regulations, "Protection of Historic Properties" [36 CFR Part 800, 1986]. Figure 1 gives a brief overview of Section 106 review.

Section 106 and the Council's regulations have served as models for historic preservation and environmental legislation and regulations at the State and local levels. They have also been internalized by many Federal agencies as part of agency environmental review systems. Thus, in addition to their specific application to the review of Federal undertakings, the principles embodied in Section 106 are broadly applicable to the processes of historic preservation planning in general.

Identification of historic properties

Identifying historic properties is a fundamental step in determining what properties may be affected by an undertaking, and is an essential step in taking into account the specific effects the undertaking may have. The Council's regulations require any Federal agency considering an undertaking to "make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the National Register [of Historic Places]" [36 CFR § 800.4(b)].

This publication is designed to assist managers in identifying historic properties. It is based on the experience of the Advisory Council on Historic Preservation and the Department of the Interior in considering historic properties under Section 106 of NHPA and related Federal authorities.

The Council and the Department of the Interior recognize that undertakings and their potential effects on historic properties vary greatly, as do the techniques, processes, and levels of effort appropriate for acquiring information about such properties. For this reason, the Council's regulations, at § 800. 3(b), call for "flexible application" of Section 106 review and the concepts in this publication should be applied flexibly as well. This publication sets out basic principles and approaches that should be considered when designing an effort to identify his-

Figure 1: A brief look at Section 106 review

How does Section 106 review work? The standard review process is spelled out in Federal regulations issued by the Advisory Council on Historic Preservation. Entitled "Protection of Historic Properties," the regulations appear in the U.S. Code of Federal Regulations at 36 CFR Part 800. The process involves five basic steps, as follow.

Step 1: Identify and evaluate historic properties

The Federal agency responsible for an undertaking begins by identifying the historic properties the undertaking may affect. To do this, the agency first reviews background information and consults with the State Historic Preservation Officer (SHPO) and others who may know about historic properties in the area. Based on this review the agency determines what additional surveys or other field studies may be needed, and conducts such studies.

If properties, that is, districts, sites, buildings, structures, or objects, are found that may be eligible for inclusion in the National Register of Historic Places, but have not yet been included in the Register, the agency evaluates them against criteria published by the National Park Service, which maintains the Register. This evaluation is carried out in consultation with the SHPO, and if questions arise about the eligibility of a given property, the agency may seek a formal determination of eligibility from the Secretary of the Interior. If a property has already been included in the National Register, of course, further evaluation is not ordinarily necessary. Section 106 review gives equal treatment to properties that have already been included in the Register and those that are eligible for inclusion.

Step 2: Assess effects

If historic properties, that is, properties included in or eligible for inclusion in the National Register, are found, the agency then assesses what effect its undertaking will have on them. Again the agency works with the SHPO, and considers the views of others. The agency makes its assessment based on criteria found in the Council's regulations, and can make one of three determinations:

o No effect: the undertaking will not affect historic properties;

o No adverse effect: the undertaking will affect one or more historic properties, but the effect will not be harmful;

o Adverse effect: the undertaking will harm one or more historic properties.

Step 3: Consultation

If an adverse effect will occur, the agency consults with the SHPO and others in an effort to find ways to make the undertaking less harmful. Others who are consulted, under various circumstances, may include local governments, Indian tribes, property owners, other members of the public, and the Council. Consultation is designed to result in a Memorandum of Agreement (MOA), which outlines measures agreed upon that the agency will take to reduce, avoid, or mitigate the adverse effect. In some cases the consulting parties may agree that no such measures are available, but that the adverse effects must be accepted in the public interest.

If consultation proves unproductive, the agency or the SHPO, or the Council itself, may terminate consultation. The agency must submit appropriate documentation to the Council and request the Council's written comments.

Step 4: Council comment

The Council may comment during step 3 of the process, by participating in consultation and signing the resulting MOA. Otherwise, the agency obtains Council comment by submitting the MOA to the Council for review and acceptance. The Council can accept the MOA, request changes, or opt to issue written comments. If consultation was terminated, the Council issues its written comments directly to the agency head, as the agency had requested.

Step 5: Proceed

If an MOA is executed, the agency proceeds with its undertaking under the terms of the MOA. In the absence of an MOA, the agency head must take into account the Council's written comments in deciding whether and how to proceed.

Alternative approaches

The Section 106 regulations also spell out three alternative means of complying with Section 106. These are

o Programmatic Agreements among an agency, the Council, one or more SHPOs, and others;

o Counterpart regulations developed by an agency and approved by the Council;

o An agreement between the Council and a State, which substitutes a State review system for the standard Section 106 review process.

toric properties, and discusses how to apply these principles and approaches under varying circumstances.

Other guidance materials

This guidance refers repeatedly to the *Secretary of the Interior's Standards and Guidelines for Identification*, which is the Federal Government's basic technical standards and guidelines for the identification of historic properties. First published as part of *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines, Standards and Guidelines for Identification* should be used to supplement this publication where specific technical guidance is needed. Bibliography information about these materials is provided in Appendix A.

II. Identification principles

Managers should observe the following basic principles when determining what kind of identification effort is appropriate for a specific land-use or development action, and when establishing agency procedures to govern the review of undertakings. Figure 2 lists these basic principles.

Figure 2: Identification principles

Identification efforts should

A. Be consistent with national historic preservation policy.

B. Be reasonable with reference to the nature of the undertaking and its likely effects.

C. Provide for consulting authorities and for resolving disputes over methods and approaches.

D. Make use of and build on existing information and on methods agreed upon or used during previous such efforts.

E. Be multidisciplinary.

For further discussion of these principles, see part II of this report.

A. Identification efforts should be consistent with national historic preservation policy.

Discussion: Section 110(d) of NHPA requires that Federal agencies, to the extent "consistent with the agency's mission and mandates," conduct "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."

It follows that an agency's identification efforts, among its other programs, should be made consistent with the act's purposes, and made to advance the act's purposes, to the extent feasible given the agency's mission and mandates.

Recommended measures: An agency should

Coordinating identification efforts with SHPOs, State historic preservation plans, and other agencies

1. Carry out identification efforts in a manner that assists the State Historic Preservation Officer (SHPO) in fulfilling his/her responsibility under § 101(b)(3)(A) of NHPA to "direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties," by

a. using identification methods recommended by the SHPO, provided such methods are consistent with these guidelines and the *Standards and Guidelines for Identification*;

b. consulting with the SHPO in designing an identification effort, and in evaluating its results;

c. when appropriate, conducting identification efforts through the SHPO, or using specialists who meet standards acceptable to the SHPO;

d. recording identification results, including properties recorded, on forms appropriate for incorporation into the State inventory;

e. providing SHPOs with identification results.

2. Identify historic properties and evaluate their significance with reference, where applicable, to the State historic preservation plan developed by the SHPO pursuant to Section 101(b)(3)(C) of NHPA.

3. Coordinate identification efforts with those of other agencies, and use identification methods compatible with those of other agencies, provided such methods are consistent with these guidelines and the *Standards and Guidelines for Identification*, in order to help advance the policy of intergovernmental cooperation in historic preservation set forth in Section 2 of NHPA.

Section 110(a)(2) of NHPA

4. Where federally owned lands or structures are involved, conduct identification efforts in a manner consistent with the requirements of Section 110(a)(2) of NHPA and the Department of the Interior's *Guidelines for Federal Agency Responsibilities, under Section 110 of the National Historic Preservation Act.*

5. Carry out identification efforts in cooperation with members of the public interested in the preservation of historic properties, pursuant to Sections 1(b)(7)

and 2(5) of NHPA and as suggested in the Council publication *Public Participation in Section 106 Review: A Guide for Agency Officials*.

B. Identification efforts should be reasonable with reference to the nature of the undertaking and its likely effects.

Discussion: 36 CFR § 800.4(b) requires "a reasonable and good faith effort" on the part of Federal agencies to identify properties on or eligible for inclusion in the National Register. An essential attribute of reasonableness is that the identification effort be responsive to the kind of undertaking involved and the kinds of effects the undertaking is likely to create.

Similarly, 36 CFR § 800.3(b) calls for "flexible application" of Section 106 review. This means that identification efforts, like other aspects of the review process, should be appropriate to the type of undertaking and its potential to affect historic properties, and to the kinds of effects anticipated.

Recommended measures:

The scope and nature of an identification effort

1. The scope and nature of an agency's identification effort should reflect

a. the likelihood that historic properties exist within areas subject to effect, and the probable nature and significance of such properties;

b. the likelihood that such properties retain their historic, cultural, and/or architectural integrity, given what is known about historic and recent modification of land or structures in the area;

c. the nature and severity of effects reasonably expectable as a result of the type of undertaking involved, including both effects that will occur as the immediate result of the undertaking, or near the site of the undertaking, and those that may occur at a later time or greater distance, provided the latter are reasonably foreseeable;

d. the nature of Federal involvement in or control over the undertaking.

Developing identification strategies for an agency's typical activities

2. Agencies should develop identification strategies for the kinds of undertakings in which they chiefly engage and, where possible, for the geographic areas in which they carry them out. The strategies should define those kinds of undertakings that may require no identification work because of their limited potential to affect historic properties. The strategies should also establish identification measures appropriate to the different kinds of undertakings for which such measures may be needed. For example, if a given kind of undertaking affects buildings but never results in ground disturbance, identification of historic buildings and structures may be needed when planning such an undertaking, but identification of archeological sites may not.

When an agency plans to develop such identification strategies, it should do so in cooperation with the SHPO and other authorities it deems appropriate, particularly in cases where the strategy will be designed for areas or subregions within a particular State. Understanding and acceptance of identification

strategies by the agency and the SHPO in advance should help later, when specific undertakings move through the Section 106 review process.

C. An agency's program for identification should provide for consulting authorities and for resolving disputes over methods and approaches.

Discussion: The regulations require consultation with the State Historic Preservation Officer at the beginning of an identification effort [36 CFR § 800.4(a)(1)(ii)] and as the effort progresses [36 CFR § 800.4(b) and (c)]. They also require that agencies seek information from others "likely to have knowledge of or concerns with historic properties in the area."

These requirements are meant to ensure that each identification effort fully uses the results of previous identification work, is as comprehensive as needed, and is developed and carried out with the advice and assistance of knowledgeable persons. Considering the multifaceted and often hard-to-interpret nature of historic properties, it should be no surprise that disagreements may arise between such knowledgeable people, or between them and the agency, about how an identification effort should be structured. Agencies should anticipate the possibility of such disagreements, and be prepared to resolve them in ways that ensure effective and reasonable identification.

Recommended measures:

Contacting individuals likely to have knowledge or concerns about historic properties

1. Agencies that carry out continuing identification efforts or repeated undertakings in a particular region, community, or neighborhood should establish contact with people likely to have knowledge of or concerns about historic properties, so that they can be consulted efficiently during particular identification projects. (For more information, see the Council's publication *Public Participation in Section 106 Review: A Guide for Agency Managers.*) Such systems of interaction with knowledgeable parties can be embodied in a Programmatic Agreement with the Council established pursuant to 36 CFR § 800.13, but such an agreement is not necessary for this purpose.

2. Agencies should establish working relationships with SHPOs to foster cooperation during identification and evaluation of historic properties. Early contact with the SHPO enables the agency to review baseline data sources such as the State historic properties inventory and comprehensive historic preservation plan or recognized local plans, and to review and consider SHPO recommendations about identification methods and priorities.

Resolving disagreements about how identification should be done

3. Where disputes arise about how identification should be done, the disputing parties should consult to resolve the disagreements.

4. Where consultation does not resolve a disagreement, the advisory opinion of the Council or of the Keeper of the National Register on behalf of the Secretary of the Interior can be sought as a basis for making a final decision as to appropriate identification methodology.

D. An identification effort should make use of and build on existing information and on methods agreed upon or used during previous such efforts.

Discussion: Managers should take care to avoid conducting redundant or otherwise unnecessary identification efforts. This requires that already-available information be used to plan identification efforts, and to establish the level and kinds of efforts needed. Such information may include general data on the area's history and prehistory, information on its historical and contemporary environment and patterns of land or building use, and the results of previous identification efforts. On the basis of such information it should be possible to decide whether field survey or other primary research is needed, and if so, to design the work needed in the most efficient manner.

It is also appropriate for agencies with continuing or recurrent identification needs in a given area to work with the SHPO, perhaps local preservation commissions, and other knowledgeable parties to establish standard methods and procedures which can then be applied in individual identification efforts as needed.

Recommended measures:

1. Agencies that carry out continuing identification efforts or repeated undertakings in a particular region, community, or neighborhood should consult with the SHPO(s) and local preservation commissions to establish standardized approaches to identification, and to develop systems to ensure that appropriate background information and the results of previous identification efforts can be readily consulted when planning new projects.

2. An early step in each identification effort should be to review relevant background information and, based on this information, to establish what level and kind of identification effort is appropriate.

E. An identification effort should be multidisciplinary.

Discussion: A great variety of historic property types may be eligible for inclusion in the National Register. Examples include historic homes, commercial areas, residential neighborhoods, industrial complexes, archeological sites of both historic and prehistoric age, ships, railroad facilities including engines and tracks, airplanes, prehistoric rock art, parks and other designed landscapes, farms and other rural landscapes, and places of traditional religious-cultural importance to American Indian and other ethnic groups. As a result, an identification effort should draw on the services of professionals and other specialists trained in the recognition and evaluation of the historic property types that are likely to occur in the area of potential effects.

Recommended measures:

1. Agencies should establish sufficient internal staff capacity at headquarters and field office levels to oversee the identification and evaluation of historic

properties, even if most actual identification efforts are carried out by others under contract.

Using a variety of professionals and specialists in identification effort

2. Both agency staff composition and the composition of teams responsible for individual identification efforts should reflect the range of historic property types with which the agency is likely to need to deal. For example, land-managing agencies most frequently deal with archeological sites, and thus can justify having historic preservation staffs in which archeologists are numerically predominant. Those that sometimes need to address American Indian cultural properties, however, should have reasonable access to cultural anthropologists; those that deal with rural landscapes should have access to folklorists, anthropologists, and landscape architects; and those that sometimes encounter historic cabins, mining structures or railroads should have access to historians, architectural historians, and industrial historians.

3. Where a team approach is warranted, the appropriate composition of the team responsible for a given identification effort should be established in consultation with the SHPO [36 CFR § 800.4(a)(1)(ii)].

III. Designing an identification effort: a decisionmaking guide

The following outline recommends steps for deciding on the scope and nature of an identification effort. Applied to a proposed Federal, federally assisted, or federally licensed undertaking, this outline should produce a reasonable decision about the kind of identification effort needed. As noted in the introduction to these guidelines, although the following steps refer primarily to the Council's regulations, and hence to Section 106 review, they are also logically applicable to historic property identification efforts required by other authorities.

A. Standard decisionmaking process for identification

Determining that a project or program is an undertaking

Managers should understand that the historic property identification process **follows** an agency's determination that a given program or project proposal constitutes an undertaking within the Council's definition of the term [36 CFR § 800.2(o)]. The determination that an action is an undertaking does **not** require the knowledge that historic properties are present. An agency determines that a given proposal is an undertaking based **solely** on that proposal's inherent ability to affect historic properties. An agency action that involves the demolition of buildings, for example, is always an undertaking because it has the potential to demolish historic buildings. Similarly, an agency action that involves land disturbance is always an undertaking because it has the potential to disturb land containing archeological sites or other historic properties. Actions with less obvious destructive potential may or may not be undertakings, depending on the actions' nature, not on the presence or absence of historic properties.

In some cases, once an agency has decided that an action is an undertaking and has defined its area of potential effects, the agency will find that the area contains

no historic properties. In other cases, the agency will find that--although historic properties are present--the undertaking will have no effect on them. These eventualities do not mean that the action no longer is an undertaking; they simply indicate that Section 106 review will be completed at an earlier stage than would have been the case had historic properties subject to effect been found.

The following standard process is applicable to most kinds of Federal agency undertakings reviewed under Section 106, and Figure 3 gives a brief summary of this process. A special process for large undertakings will be outlined later.

Figure 3: Standard decisionmaking process for identification

1. Establish area(s) of potential effects.

2. Determine whether the area has been surveyed or otherwise inspected to identify historic properties.

3. Determine whether the area is "large" or "small".

4. Determine whether the available information provides a reliable basis for decisionmaking.

5. Determine whether the area should be subjected to intensive survey, and whether such a survey can be carried out within a reasonable period of time and at reasonable cost.

6. Determine whether an alternative to intensive survey is appropriate.

7. Decide how to proceed with the Section 106 review.

For further discussion of this standard decisionmaking process, see part III.A. of this report.

1. Establish areas(s) of potential effect.

The area of a particular undertaking's potential effect on historic properties is "the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist" [36 CFR § 800.2(c)]. It is within the area(s) of potential effect of a particular undertaking that an agency is responsible for identifying historic properties under Section 106 [36 CFR § 800. 4(a)(1)].

At this stage in decisionmaking, it is appropriate to define the area of potential effect broadly, considering all reasonably foreseeable potential effects the particular type of undertaking could have. Narrowing the area that is subject to specific investigation will occur subsequently.

Definition of an "effect"

An effect is defined for purposes of Section 106 as an alteration in the characteristics of a property "that may qualify the property for inclusion in the National

Register" [36 CFR § 800. 9(a)]. The regulatory definition goes on to note that alteration to features of a property's location, setting, or use may be relevant, depending on the nature of the property's significance. For example, altering the setting of an archeological site important only for the information it contains may not affect the site's significant characteristics (that is, its information), but altering the setting of a historic building whose significance lies in the relationship of its architectural elements to those of other buildings in the vicinity may have a major effect on the building.

While the area of potential effect should be defined broadly, it should nevertheless be linked logically to the potential effects of the undertaking. For example, as noted under principle B ("Identification efforts should be reasonable. . . ") in part II above, if an undertaking will affect only existing buildings and structures, and has no potential for ground disturbance, it is unlikely to have effects on subsurface archeological sites. As a result, such archeological sites might be considered to fall outside the area of potential effect.

When the area of potential effects is defined

It is important to remember that the area of potential effects is defined **before** the identification effort itself begins, so it may not be known whether any historic properties actually exist there. This is why the regulations call for defining the area of potential effects with reference to changes that may occur in the character or use of historic properties "if any such properties exist." In other words, if an undertaking could result in changes that would affect historic properties that may subsequently be found to exist, then the land within which such changes will occur should be included in the undertaking's area of potential effect. Where alternative locations for an undertaking are considered, each such location--for example, each alternative site for a reservoir, or each alternative alignment for a highway--should be included in the area of potential effect.

2. Determine whether the area has been surveyed or otherwise inspected to identify historic properties.

This determination requires a review of background information on the area [36 CFR § 800. 4(a)(1)(i)], and should be made in consultation with the SHPO [36 CFR § 800. 4(a)(1)(ii)]. Other knowledgeable parties should also be consulted as needed [36 CFR § 800. 4(a)(1)(iii)]. At this stage the concern is only whether the area has been inspected; the quality and nature of the inspection will be considered subsequently, depending on the scale of the undertaking.

If the area has been inspected, the next step is to consider the adequacy of the information resulting from the inspection, so the agency should skip to item III.A.4 ("Determine whether available information provides a reliable basis for decisionmaking"), below.

If the area has not been inspected, or if the results of the inspection do not provide a reliable basis for decisionmaking, then further identification work may be needed. The most efficient approach to further identification work will depend on the size of the area under consideration, so the agency should proceed

to item III.A.3 ("Determine whether the undertaking is 'large' or 'small'"), immediately below.

3. Determine whether the area is "large" or "small".

How the agency defines the terms large and small can vary depending on the region of the country involved, whether the area is rural or urban, the nature of the local environment, and the nature of land use, among other factors. The distinction is an important one, however, because the kinds of identification methods that are appropriate for use in a small area may be distinctly different from those appropriate for use in a large area. It is recommended that agencies consult with SHPOs to establish general agreement about how to distinguish between large and small areas of potential effect.

If the area is small, however the agency has decided to define this term, the agency should proceed to item III.A.4., immediately below, to determine what if anything needs to be done to identify historic properties. If the area is large, the agency should follow the steps outlined in part III.B. of this publication ("Special decisionmaking process for identification in large areas").

4. Determine whether the available information provides a reliable basis for decisionmaking.

Available information may be adequate for decisionmaking even where an area or subarea has not been fully inspected to identify historic properties, depending on the nature and quality of the information, the kinds of properties involved, and the kinds of effects anticipated. For example, where high-quality surveys have been done of portions of a large area, and where extensive background information is available, it may be possible to generate an accurate "predictive model" projecting the distribution and nature of historic properties.

Conversely, available information may be inadequate for decisionmaking even where an area or subarea has been fully inspected. If the inspection was carried out a number of years ago, "[t]he passage of time or changing perceptions of significance may justify reevaluation of properties that were previously determined to be eligible or ineligible [for the National Register]" [36 CFR § 800.4(c)(1)]. If the inspection was carried out using obsolete methods, by less than fully qualified persons, or addressing only certain kinds of properties (e.g., only archeological sites, or only standing structures), its results may provide an inadequate basis for decisionmaking.

The reliability of previous inspection results also varies with the intensity of the inspection. For example, as discussed in the *Standards and Guidelines for Identification*, an intensive survey should result in a detailed and comprehensive description of historic properties in an area, but a reconnaissance survey almost certainly will not. Similarly, reliability varies with the extent to which the field inspection made effective use of background data. For example, an inspection of the surface of the ground may be an inadequate basis for decisionmaking about

the presence or absence of archeological sites where background data suggests that soil buildup may have buried such sites.

The adequacy of available information should be assessed in consultation with the SHPO [36 CFR § 800.4(a)(1)(ii)].

If the available information does provide a reliable basis for decisionmaking, then the agency is in a position to decide how to proceed with Section 106 review, as discussed under item III.A.7. below.

If the available information is not adequate as a basis for decisionmaking, then field survey should be considered, as discussed under item III.A.5. ("Determine whether the area should be subjected to intensive survey.... ").

5. Determine whether the area should be subjected to intensive survey, and whether such a survey can be carried out within a reasonable period of time and at reasonable cost.

Definition of "intensive survey"

An intensive survey is defined in the *Standards and Guidelines for Identification* as a survey that "describes the distribution of properties in an area, determines the number, location, and condition of properties, determines the types of properties actually present within the area, permits classification of individual properties, and records the physical extent of specific properties." It usually involves on-the-ground inspection of all land and structures in the area, coupled with appropriate background archival research. It often includes interviews with residents and people knowledgeable about the area's historic resources. Sometimes test excavations for archeological resources or detailed inspections of particular structures are conducted. An intensive survey also includes analysis of results, and preparation of appropriate reports. Guidelines for intensive survey can be found in the *Standards and Guidelines for Identification*.

Variables to consider in deciding whether to undertake an intensive survey include the size and complexity of the land area involved, whether the area is urban or rural, the types of properties expected, the ease or difficulty with which such property types can be identified, the extent of Federal control over the lands involved, the ease or difficulty with which access can be obtained, and the nature of projected effects. The kind of survey needed, and variables involved in carrying it out, should be discussed with the SHPO [36 CFR § 800.4(a)(1)(ii)].

If circumstances suggest that an intensive survey is needed, and that the area can be subjected to intensive survey within a reasonable period of time and at reasonable cost, the agency should design and implement such a survey in consultation with the SHPO. The survey should be consistent with the *Standards and Guidelines for Identification*, as suggested by 36 CFR § 800. 4(b). The Department of the Interior's *Guidelines for Federal Agency Responsibilities, under Section 110 of the National Historic Preservation Act* should also be used as guidance where applicable.

Based on the results of the survey, the agency will be in a position to decide how to proceed with Section 106 review (item III.A.7., below).

If the area cannot be subjected to intensive survey within a reasonable period of time and at reasonable cost, alternative identification methods should be considered, as discussed immediately below.

6. Determine whether an alternative to intensive survey is appropriate.

Alternatives to intensive survey may be appropriate under a number of conditions. For example:

"Reconnaissance survey"

- If it is questionable whether any historic properties exist in an area, a reconnaissance survey may be appropriate. A reconnaissance survey is defined by the *Standards and Guidelines for Identification* as one that provides a basis for "the formulation of estimates of the necessity, type and cost of further identification work and the setting of priorities for the individual tasks involved." It may involve a variety of activities, such as a drive-through to look for standing historic structures, interviews with local residents, and archeological inspection of sample tracts, coupled with appropriate background research. In some cases a reconnaissance survey may show that historic properties are so unlikely to occur that there is no need for more intensive survey. In other cases reconnaissance survey may permit further survey work to be focused only on particular subareas or types of properties.

Projections based on surveys

- If access to all lands involved cannot be obtained, it may be possible to make projections based on survey of those lands to which access can be gained.

Use of a "predictive model"

- If the area of potential effects is poorly defined, as may occur when Section 106 review is initiated early in planning an undertaking with numerous alternatives, or when an undertaking's total range of effects are not entirely foreseeable at the time review begins, it may be appropriate to develop a "predictive model." (See part III.B.1., "Use available information to develop a 'predictive model'") Such a model uses background information about the surrounding region as a basis for predicting the kinds of properties that may exist within the area of potential effects. If such a model reliably indicates that the properties subject to effect are likely to represent property types whose treatment will not generate controversy or raise complicated issues, it may be possible to continue Section 106 review on the basis of predictive model data without the need for firm and unequivocal identification of specific historic properties subject to effect.

When considering possible alternatives, the SHPO should be consulted [36 CFR § 800.4(b)].

If an alternative is selected, the agency should carry it out and decide how to proceed with Section 106 review as discussed immediately below. In the unlikely event that intensive survey cannot be done and no alternative can be found, it may not be possible for the agency to comply with Section 106. The agency should immediately contact the Council to discuss further options.

7. Decide how to proceed with Section 106 review.

Generally speaking, review of available information, the results of a survey, or the results of an alternative form of identification will result in one or more of the following determinations:

When historic properties exist that are listed on the National Register

a. Properties exist in the area that are already listed in, or have been determined eligible for, the National Register. If so, the agency should determine effects pursuant to 36 CFR § 800.5 with respect to such properties and also consider whether paragraph b., below, is pertinent.

When historic properties exist that may meet National Register criteria

b. Properties exist in the area that may meet the National Register criteria. If so, the agency should consider the eligibility of such properties pursuant to 36 CFR § 800.4 (c) and also consider whether paragraph c., below, pertains to the area.

When property types are predicted that may meet National Register criteria

c. Property types are known or predicted to occur in the area that may meet the National Register criteria, based on reconnaissance survey data, predictive modeling, or other information. If so, it may be appropriate to execute a Programmatic Agreement pursuant to 36 CFR § 800.13 to address effects on such property types. If the undertaking will affect both known specific historic properties and predicted property types (for example, if it will result both in the demolition of a particular historic building and in altered traffic patterns or patterns of land use that may affect other historic properties that have not yet been identified), "programmatic" stipulations sometimes can be included in a Memorandum of Agreement executed pursuant to 36 CFR § 800.5(e)(4). Finally, the agency should consider whether paragraph d., below, is applicable.

When historic properties may be undetected

d. The possibility exists that properties of historical significance have gone undetected, and thus could be subject to discovery during implementation of the undertaking. If so, the agency should consider developing a plan for the properties' treatment pursuant to 36 CFR § 800.11(a).

B. Special decisionmaking process for identification in large areas

If an area of potential effects has not been inspected in the past, and if it is defined by the agency in consultation with the SHPO as large (see item III.A.3, "Determining whether the area is 'large' or 'small'", above), then the following decisionmaking process is recommended. This process is summarized in Figure 4.

Figure 4: Special decisionmaking process for identification in large areas

1. Use available information to develop a "predictive model" indicating where historic properties exist or are likely to exist.

2. Test the predictive model.

3. Establish additional survey needs and approaches, if any, and consider a Programmatic Agreement.

For further discussion of this special decisionmaking process, see part III.B. of this report.

1. Use available information to develop a "predictive model" indicating where historic properties exist or are likely to exist.

Where a large area is involved, some portions of it may have been inspected to identify historic properties. Even if no organized identification effort has been made, some historic properties may be known, and may even have been nominated to and included in the National Register based on property-specific studies. Other properties may be recorded in State or local inventories, in publications and in manuscripts, while others may be known to experienced people in the area. Other sources of information are historical documents, archeological reports, ethnographic and sociological reports, geographic and geomorphological data, and general anthropological and sociological premises about human behavior, settlement systems, and economic patterns under different environmental conditions. All these sources can be used to predict the presence or absence of historic properties.

For a full discussion of such sources see the *Guidelines for Federal Agency Responsibilities, under Section 110 of the National Historic Preservation Act* and the *Standards and Guidelines for Identification*. Available information should be reviewed in consultation with the SHPO [36 CFR § 800.4(a)(1)(i-iii)], resulting in a statement of expectations about the kinds of historic properties known or anticipated to exist, and their locations. Such a statement, including documentation about the sources from which it derived and the sources' likely reliability, is usually referred to as a "predictive model" because it predicts how historic properties of various kinds should be distributed within the area.

2. Test the predictive model.

A predictive model should not be regarded as reliable until it has been tested against objective information derived from fieldwork. In some cases, enough field survey work may already have been done within or near the area of potential effects to permit the model to be tested, but in most cases some kind of further survey will be needed. Generally a reconnaissance survey is used to test a predictive model; often the reconnaissance survey involves inspection of a controlled sample of the area, including both locations that are predicted to contain historic properties and locations that are predicted **not** to contain them.

3. Establish additional survey needs and approaches, if any, and consider a Programmatic Agreement.

Once a predictive model is shown through testing to be reasonably reliable, it can be used to guide further survey work and make it more efficient than it would otherwise be. In some cases a reliable predictive model may be an acceptable basis for determining that no further survey work is needed.

Assuming that further work is necessary to identify historic properties subject to effect, the predictive model can be used to concentrate survey efforts on those locations most likely to contain such properties, and to design survey strategies specific to the kinds of properties that can be expected. For example, if the model predicts that buried archeological sites will occur in association with particular landforms, survey work around such landforms can be designed to include test excavation. If the model indicates that buildings representing a particular period may be found in a neighborhood, an architectural historian specializing in the architecture of the period can be added to the survey team. If the model suggests that a portion of the area is used by an American Indian group for traditional cultural purposes, ethnographic studies might be added to the survey program.

Considering an undertaking's effects in determining need for further survey work

The nature of the undertaking's effects on the area should also be considered in designing further survey work. It is possible that the undertaking will have **direct effects only**. In other words, that the undertaking itself will disturb land, and/or demolish or modify buildings, throughout the area of potential effect. On the other hand, an undertaking may have **indirect effects only**. That is, it may not disturb land and/or demolish or modify buildings anywhere within the area of potential effect but may lead to subsequent, reasonably foreseeable, actions that will do so. Most large undertakings, however, can be expected to have mixed effects. That is, they will disturb some land and/or demolish or modify some buildings in some subareas of the area of potential effect ("subareas directly affected"), and make possible subsequent, reasonably foreseeable actions that will do so in other subareas ("subareas indirectly affected").

It may be appropriate to emphasize the survey of subareas directly affected, but areas indirectly affected should not be ignored. Even if only minor survey work is possible in areas indirectly affected, it may still be possible to project the effects of the undertaking on the kinds of historic properties that are predicted to occur there, and develop measures to control such effects through Section 106 review.

For example, if an undertaking will induce urban growth in an area, it may be possible to work with local planning authorities to encourage the conduct of surveys and the protection of historic properties in advance of future construction in locations where the predictive model indicates that historic properties are likely to be found.

Considering a Programmatic Agreement

If the predictive model appears to be reasonably reliable, and if the likely effects of the undertaking can be reasonably well predicted, it may be most efficient for the agency to comply with Section 106 by executing a Programmatic Agreement, following the procedures set forth in 36 CFR § 800.13. Such an agreement can spell out what further survey work will be done (if any) and what steps will be taken to avoid, reduce, or mitigate predicted effects.

If a Programmatic Agreement is not appropriate, the results of a large area identification effort as discussed above can be used as the basis for making informed decisions about how to carry out Section 106 review with respect to individual, localized actions. (See part III.A.7., "Decide how to proceed with Section 106 review.")

The agency should consult the Council and the SHPO when determining which approach to pursue, so as to ensure that Section 106 review is carried out in accordance with a schedule that is consistent with the planning and approval schedule for the undertaking [36 CFR § 800.3(c)] and to ensure that the Council's opportunity to comment on the undertaking is not foreclosed [36 CFR § 800.6(d)].

IV. Reporting and preserving identification results

Proper reporting of identification effort

Whatever kind of identification effort is carried out, it should be properly reported. A report of an identification effort should describe the area studied, the methods employed, any problems encountered, and the results of the study. It should present relevant background data and field observations. The report's preparers and their titles, positions, or other qualifications should be identified. To the extent feasible, the report should be designed to provide information in a form that will be usable by others who may rely upon it in designing future studies, and that will facilitate integration into the historic property inventories maintained by the SHPO and, in some cases, by other Federal agencies, local governments, or Indian tribes.

V. Conclusion

Use of the principles and decisionmaking guides offered above, together with the *Standards and Guidelines for Identification*, *Guidelines for Federal Agency Responsibilities, under Section 110 of the National Historic Preservation Act*, and other pertinent guidance, should ensure that an agency's program of identification meets the standard of being "a reasonable and good faith effort to identify historic properties that may be affected by the undertaking" [36 CFR § 800.4(b)].

Appendix A: Further guidance

Brace, P. and Klein, J. *Archeological Resources and Urban Development: A Guide to Assess Impact*. Washington, DC: American Society of Landscape Architects, 1984.

Available from the ASLA bookstore as LATIS No. 7 at $15.00 a copy. To order, write LA bookstore, P.O. Box 6525, Ithaca, NY 14851, or call (607) 277-2211 for credit card orders.

Derry, A.; Jandl, H. W.; Shull, Carol D.; and Thorman, J. *Guidelines for Local Surveys: A Basis for Preservation Planning*. Revised by Patricia L. Parker. Washington, DC: National Park Service, U. S. Department of the Interior, 1985.

Available from the American Association for State and Local History (AASLH) as a technical report (TR13) for $5.55 per copy. To order write AASLH/ Order/Billing Dept./ 172 2nd Avenue North/ Suite 102/ Nashville, TN 37201. ($2.00 postage charge; minimum order is $10.00)

Guidelines for Federal Agency Responsibilities, under Section 110 of the National Historic Preservation Act. 53 *Federal Register* 4727-46, February 17, 1988.

King, T. F. *The Archeological Survey: Methods and Uses*. Washington, DC: National Park Service, U. S. Department of the Interior, 1978.

Available from U. S. Department of Commerce as NTIS order no: PB284061 at $19.95 for paperback and $6.95 microfiche. To order contact U.S. Department of Commerce/ National Technical Information Service/ 5285 Port Royal Road/ Springfield, VA 22161. ($3.00 postage charge)

Public Participation in Section 106 Review: A Guide for Agency Officials. Washington, DC: Advisory Council on Historic Preservation, 1988.

Single copies available from the Council on request. (In preparation)

Secretary of the Interior's Standards and Guidelines for Identification. 48 CFR 44720, September 1983.

Published by the U. S. Department of the Interior as part of *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines*. 48 CFR 44716-42, September 29, 1983.

Attachment 5

ATTACHMENT #5

WORKING WITH
SECTION 106

PUBLIC PARTICIPATION IN SECTION 106 REVIEW:
A Guide for Agency Officials

ISSUED BY
Advisory Council on Historic Preservation

FEBRUARY, 1989

Cover photos:

Council members toured the Big Five Tunnel in Idaho Springs, Colorado, an EPA Superfund cleanup site subject to Section 106 review. (Brit A. Storey, photographer.)

A member of the Kootenai tribe spoke to the Council about the protection of historic properties on tribal lands and Native Americans' participation in the Section 106 review process. (Robert Fink, photographer.)

Interested property owners, State and Federal officials met to discuss plans for a Maryland highway project subject to Section 106 review. (Candace Clifford, photographer.)

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PUBLIC PARTICIPATION IN SECTION 106 REVIEW:
A Guide for Agency Officials

I. Introduction

The National Historic Preservation Act (NHPA) and other Federal authorities, and a growing number of State and local laws, ordinances, and policies, require or encourage the consideration of historic properties in the planning and implementation of land use and development projects.

What Section 106 requires of Federal agencies

Section 106 of NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties, and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings. The Council's regulations, "Protection of Historic Properties" [36 CFR Part 800, 1986], guide implementation of Section 106. The resulting system is referred to as the Section 106 review process. Figure 1 gives a brief overview of Section 106 review.

The Section 106 review process provides for active participation by the public. The general public must be notified of agency actions under the regulations, and organizations and individuals concerned with the effects of an undertaking on historic properties (defined in the regulations as "interested persons") are to be involved in the review process in various ways, depending on their particular interests.

The purpose of this publication is to help agencies involve the public effectively, with minimum burden to agency missions. A separate publication will provide advice to the public about participation in the review process.

For general information on the Section 106 review process or on the regulations themselves, the Council's publication, *Section 106, Step-by-Step*, and other literature concerning the process and related historic preservation requirements are available from the Council.

II. Planning for public participation

Systematic planning for public participation in Section 106 review will help agencies ensure that such participation takes place in an orderly and productive manner. Identifying and addressing the public's concerns about historic preservation issues should be a regular part of each agency's overall planning system, whether the activities planned are specific projects or the ongoing management of land or structures.

Figure 1: A brief look at Section 106 review

How does Section 106 review work? The standard review process is spelled out in *Federal regulations issued by the Advisory Council on Historic Preservation.* Entitled "Protection of Historic Properties," the regulations appear in the U.S. Code of Federal Regulations at 36 CFR Part 800. The process involves five basic steps, as follow.

Step 1: Identify and evaluate historic properties

The Federal agency responsible for an undertaking begins by identifying the historic properties the undertaking may affect. To do this, the agency first reviews background information and consults with the State Historic Preservation Officer (SHPO) and others who may know about historic properties in the area. Based on this review the agency determines what additional surveys or other field studies may be needed, and conducts such studies.

If properties, that is, districts, sites, buildings, structures or objects, are found that may be eligible for inclusion in the National Register of Historic Places, but have not yet been included in the Register, the agency evaluates them against criteria published by the National Park Service, which maintains the Register. This evaluation is carried out in consultation with the SHPO, and if questions arise about the eligibility of a given property, the agency may seek a formal determination of eligibility from the Secretary of the Interior. If a property has already been included in the National Register, of course, further evaluation is not necessary. Section 106 review gives equal treatment to properties that have already been included in the Register and those that are eligible for inclusion.

Step 2: Assess effects

If historic properties, that is, properties included in or eligible for inclusion in the National Register, are found, the agency then assesses what effect its undertaking will have on them. Again the agency works with the SHPO, and considers the views of others. The agency makes its assessment based on criteria found in the Council's regulations, and can make one of three determinations:

- No effect: the undertaking will not affect historic properties;
- No adverse effect: the undertaking will affect one or more historic properties, but the effect will not be harmful;
- Adverse effect: the undertaking will harm one or more historic properties.

Step 3: Consultation

If an adverse effect will occur, the agency consults with the SHPO and others in an effort to find ways to make the undertaking less harmful. Others who are consulted, under various circumstances, may include local governments, Indian tribes, property owners, other members of the public, and the Council. Consultation is designed to result in a Memorandum of Agreement (MOA), which outlines measures agreed upon that the agency will take to reduce, avoid, or mitigate the adverse effect. In some cases the consulting parties may agree that no such measures are available, but that the adverse effects must be accepted in the public interest.

If consultation proves unproductive, the agency or the SHPO, or the Council itself, may terminate consultation. The agency must submit appropriate documentation to the Council and request the Council's written comments.

Step 4: Council comment

The Council may comment during step 3 of the process, by participating in consultation and signing the resulting MOA. Otherwise, the agency obtains Council comment by submitting the MOA to the Council for review and acceptance. The Council can accept the MOA, request changes, or opt to issue written comments. If consultation was terminated, the Council issues its written comments directly to the agency head, as the agency had requested.

Step 5: Proceed

If an MOA is executed, the agency proceeds with its undertaking under the terms of the MOA. In the absence of an MOA, the agency head must take into account the Council's written comments in deciding whether and how to proceed.

Alternative approaches

The Section 106 regulations also spell out three alternative means of complying with Section 106. These are

- Programmatic Agreements among an agency, the Council, one or more SHPOs, and others;
- Counterpart regulations developed by an agency and approved by the Council;
- An agreement between the Council and a State, which substitutes a State review system for the standard Section 106 review process.

The regulations provide that Section 106 review, including public participation in such review, may be fully coordinated with and satisfied by the procedures carried out by agencies under the authority of the National Environmental Policy Act (NEPA) and other pertinent statutes. The Council encourages agencies to provide for public participation in Section 106 review through existing agency public participation procedures, and also encourages the public to use such procedures fully to raise and resolve historic preservation issues.

Integrating public participation into an agency's administrative processes

To the maximum extent possible, public participation in Section 106 review should be integrated into an agency's normal administrative processes in such a way as to ensure that both Section 106 in general, and public participation in particular, occur in a timely manner well before potentially damaging undertakings are approved. Agencies that are organized into headquarters, regional, and field offices should ensure that their procedures at all levels provide adequately for timely review and public participation. It is essential that agencies ensure that field offices have sufficient time to meet all applicable requirements of Section 106 review, and receive necessary guidance and assistance from regional and headquarters levels.

"Interested persons" and the general public

The Council's regulations distinguish between "interested persons" and other elements of the public. "Interested persons" are defined as "organizations and individuals that are concerned with the effects of an undertaking on historic properties" [36 CFR § 800.2(h)]. Interested persons may be, and in some cases must be, invited to participate in consultation about how to reduce the adverse effects of an undertaking on historic properties. (See Figure 2.) Members of the general public who are not interested persons must be notified of planned actions and decisions, and their comments must be considered, but they need not be invited to be active participants in consultation. It is important that in planning public participation agencies establish mechanisms for identifying and involving interested persons, without diminishing the role of the general public.

Part III, which follows, discusses general principles that should be considered in all kinds of public participation in Section 106 review. Subsequent portions of this paper discuss points to consider in evaluating an existing public participation process, offer recommendations about how to work with the public on a programmatic basis, and outline step-by-step procedures for involving the public in each activity required by the regulations.

Figure 2: Who are "interested persons"?

Definition

The regulations define "interested persons" as "those organizations and individuals that are concerned with the effect of an undertaking on historic properties" [36 CFR § 800.2(h)].

Mandatory participation by interested persons

The following are considered to be interested persons who must be invited to participate in consultation when these persons so request [36 CFR § 800.5(e)(1)]:

- The head of a local government (for example, the mayor of a city, the chief executive of a county government, or his/her designee) when the undertaking may affect historic properties within the local government's jurisdiction;
- The representative of an Indian tribe (federally recognized tribe or Alaska Native Corporation) when an undertaking will affect Indian lands or properties of historic value to the tribe on non-Indian lands. (In the former case the tribe must be invited to concur in any agreement reached by the consulting parties) [36 CFR § 800.1(c),(2)(iii)];
- Applicants for or holders of grants, permits, or licenses that are the subjects of Section 106 review;
- Owners of affected lands, that is, persons who meet the regulations' definition of "interested person" and who hold title to real property within an undertaking's area of potential effect.

Optional participation by interested persons

The following are considered to be interested persons who may be invited to participate in consultation if the agency official, SHPO, and Council (if participating) jointly determine that participation is appropriate [36 CFR § 800.5(e)(2)]:

- Traditional cultural leaders, that is, individuals in a Native American group or other social or ethnic group who are recognized by members of the group as experts on the group's traditional history and cultural practices [36 CFR § 800.1(c)(2)(iii)];
- Other Native Americans, that is, American Indians, Native Hawaiians, and others who are identified by themselves and recognized by others as members of a named, native cultural group that historically has shared linguistic, cultural, social, and other characteristics, but that is not necessarily a federally recognized Indian tribe or Alaska Native Corporation [36 CFR § 800.1(c)(2) (iii)].
- Others who meet the definition of "interested person" [36 CFR § 800.5(e)(1)(iv)].

II. Public participation principles

Agencies should consider the following principles in designing systems for public participation in Section 106 review. See Figure 3 for a summary of public participation principles.

Figure 3: Public participation principles

A. Public participation in Section 106 review should support historic preservation objectives and help the Federal agency meet its program responsibilities.

B. Both Federal agencies and members of the public have responsibilities in a public participation program.

C. Public participation objectives should be approached with flexibility.

D. The level and type of public participation should be appropriate to the scale and type of undertaking and to the likelihood that historic properties may be present and subject to effect.

A. Public participation in Section 106 review should support historic preservation objectives and help the Federal agency meet its program responsibilities.

Practical objectives of an agency's public participation effort

An agency's public participation effort should be designed to meet such practical objectives as the following:

- obtaining assistance from members of the public likely to have information about historic properties and the areas that may be affected by undertakings, and informing them of agency undertakings and purposes;
- utilizing the applicable knowledge and expertise of professional and avocational practitioners of such disciplines as history, architectural history, landscape architecture, and archeology;
- involving property owners, local governments, Indian tribes, neighborhood associations, and others whose immediate interests may be affected, whose viewpoints need to be considered in decisionmaking, and who may need to participate in Section 106 review as interested persons;
- considering viewpoints presented by interested persons and other members of the public, both as an aid in information gathering and as a basis for decisionmaking;
- identifying and working toward the resolution of conflicts, if any, between program objectives and preservation objectives, based on full consideration of feasible alternatives.

B. Both Federal agencies and members of the public have responsibilities in a public participation program.

Agencies have the affirmative duty to make the public aware of the opportunity to participate in Section 106 review, and to encourage the participation of interested persons. Agencies should be able to expect members of the public who are concerned about historic properties to pursue their opportunity to participate actively and cooperatively in Section 106 review. The process is designed to emphasize good-faith information sharing, consultation and exploration of alternatives, to promote agreement on measures acceptable to all involved. Such a process requires understanding of each party's rights and obligations and respect for diverse points of view.

C. Public participation objectives should be approached with flexibility.

The regulations may be implemented "in a flexible manner reflecting differing program requirements, as long as the purposes of Section 106...and these regulations are met" [36 CFR § 800.3(b)]. With reference to public participation, this means that the agency should involve the public in a flexible manner that reflects the type of undertaking under consideration, the agency's administrative processes, and the nature of known or expected public interests.

D. The level and type of public participation should be appropriate to the scale and type of undertaking and to the likelihood that historic properties may be present and subject to effect.

The level of agency effort to ensure public participation in Section 106 review should be appropriate to the scale and type of undertaking involved, to its potential effects, to the kinds of historic properties likely to be affected, and to the kinds of possible public interest present. For example, an undertaking of small scale or in an area not likely to contain historic properties rarely requires the level of public participation that a large scale undertaking or one in an area of known or likely historical significance will warrant. Similarly, an undertaking of a kind that has little potential for adverse effect to historic properties is unlikely to require the same level of public participation as will one that is likely to have major adverse effects.

Based on their mandates and on the volume and variety of their actions, Federal agencies are encouraged to define levels and methods of public participation appropriate to the various classes of undertakings in which they participate. The levels and methods should be consistent with Council guidelines, and should take into account the potential each class of undertaking has for affecting historic properties; they should also provide alternative approaches where particular circumstances warrant them.

For an individual case, at the time an agency initiates Section 106 review, it may not know what kinds of historic properties are subject to effect, what kinds of effects will occur, and what kinds of interests may be affected. A major part of the Section 106 review process involves making informed determinations about precisely these matters. Initial formulation of a means for public participation thus may require some initial identification effort. (See the Council/National Park Service publication, *Identification of Historic Properties: A Decisionmaking Guide for Managers*.) A plan for public participation will also benefit from the advice of the SHPO. Approaches may have to be adjusted as increased understanding is gained about what effects, if any, the undertaking will have.

IV. Evaluating an existing public participation program

The Council and its regulations encourage agencies to "examine their administrative processes to see that they provide for participation by the State Historic Preservation Officer and others interested in historic preservation," and to consult with the Council to develop special procedures if impediments to such participation are found to exist [36 CFR § 800.1(b)].

Questions to consider in evaluating an agency's public participation process

In reviewing their current processes regarding public participation to ensure that they provide adequately for participation by those interested in historic preservation, in a manner consistent with these Council guidelines, agencies should consider such questions as the following:

- Does the agency make decisions about the scope and timing of public participation in a manner commensurate with the scale of the undertaking and the likelihood that historic properties and public interests in such properties will be affected?
- Does the agency inform the public of potential undertakings in a timely manner, when the widest feasible range of alternatives is open for consideration?
- In such timely public notice, does the agency explicitly request views on historic preservation issues or concerns?
- Does the agency specifically invite the views of groups likely to have interests in potentially affected historic properties?
- Does the agency identify interested persons early in Section 106 review, invite them to participate, and facilitate their participation?
- Does the agency provide mechanisms for addressing and, if possible, resolving the concerns of interested persons?
- Do agency procedures provide for information to be readily available to the public at all stages of the review process, including information on Section 106 review and the means by which the public can participate in review?

- Does the procedure systematically integrate and document the results of public participation, including public views and agency responses, into the Section 106 review process?

If the answers to the above questions are affirmative, the agency's program should fully meet the purposes of public participation in Section 106 review. If not, the program may need to be modified to meet the purposes of Section 106 and Council regulations. The regulations encourage agencies to consult with the Council in making such modifications [36 CFR § 800.1(b)].

V. Methods of public participation through programmatic coordination

Definition of programmatic coordination

Programmatic coordination means establishing and maintaining relationships with elements of the public on an ongoing basis with respect to an agency program, as distinguished from contacting or being contacted by the public only when particular actions are contemplated. Where an agency anticipates numerous undertakings in a general area, programmatic coordination with the public is strongly recommended as a prelude, and sometimes as an alternative, to public participation in the review of individual undertakings. Early outreach to the public to identify potentially interested persons and to establish specific means by which they will be afforded the opportunity to participate in review can greatly facilitate planning of specific undertakings.

When programmatic coordination with the public is appropriate

Programmatic coordination may be especially appropriate for Federal land management agencies, whose undertakings involve the ongoing administration and use of large areas of land. Since interested members of the public, like the land management agencies themselves, generally have long-term interests in the land and resources involved, groups representing various relevant interests are often known to the agencies, and arrangements can be made to ensure that public participation, where needed in specific cases, occurs in an efficient and effective manner. The Council also recommends programmatic coordination where an agency anticipates participating in numerous undertakings in a general area.

Systems for programmatic coordination can be embodied in agency procedures, in memoranda of understanding with interested persons, in Programmatic Agreements executed in accordance with 36 CFR § 800.13, and in informal arrangements designed to meet specific needs. Upon request, the Council will review such systems and advise agencies of their consistency with the purposes of NHPA [Section 202(a)(6)].

Agencies should periodically review and revise their programs for coordination with the public to ensure that these programs remain effective and that they provide for participation by those who are interested in current undertakings.

VI. Methods of public participation on an individual undertaking

The Council recommends that agencies use the following methods when arranging for public participation in the review of individual undertakings. As noted elsewhere, arrangements for public participation should be made early in the agency's consideration of the undertaking, when the widest feasible range of alternatives is open for consideration [36 CFR § 800.3(c)]. Figure 4 gives a summary of these methods.

Figure 4: Methods of public participation on an individual undertaking

A. Determine the extent of public participation needed.

B. Identify potential participants.

C. Seek information from parties with knowledge or concerns.

D. Determine whether "interested persons" exist.

E. Coordinate identification and evaluation with interested persons.

F. Coordinate effect determination with interested persons.

G. Consult with interested persons about adverse effects.

H. Report the conclusion of Section 106 review to interested persons.

A. Determine the extent of public participation needed.

Normally, Section 106 review begins with an assessment of information needs for identification of historic properties, as outlined in 36 CFR § 800.4(a). At this point, the responsible agency should begin to provide for public participation.

When no arrangements for public participation are needed

In some cases, no specific public participation arrangements may be needed. This may be the case if prior programmatic coordination has shown that there are no "local governments, Indian tribes, public and private organizations, [or] other parties likely to have knowledge of or concerns with historic properties in the area [36 CFR § 800.4(a)(1)(iii)]. An example of such a circumstance might be one in which a local government has carried out programmatic coordination with respect to a neighborhood and found no interest in the neighborhood's historic, architectural, archeological, or cultural characteristics. Specific arrangements may be unneeded, too, if the undertaking has very little potential for effect on historic properties, or if it has some potential for effect, but is identical with or very similar to other undertakings that have in the past generated no public interest,

and there is no reason for believing that public interest now exists that did not exist previously.

When particular pre-arranged forms of public participation are needed

In other cases, the scale or nature of the undertaking may be such that only a particular pre-arranged form of public participation is needed. For example, an agency undertaking rehabilitation of houses in a historic district might, through programmatic coordination, find that consultation with a neighborhood organization was the best way to ensure public participation in each of its projects, without the need for wider notification of the public. Similarly, a land managing agency whose undertakings might affect properties of cultural importance to an Indian tribe might establish specific agreements with the tribe and its traditional cultural leaders to ensure that their concerns were identified and addressed, without the need for public participation on a broader scale.

When general public participation is needed

In other cases general public participation in Section 106 review may be needed. The further steps outlined below are recommended for such cases; they should be carried out in the context of the agency's overall public participation process.

B. Identify potential participants.

The regulations direct agencies to seek information from "local governments, Indian tribes, public and private organizations, and other parties likely to have knowledge of or concerns with historic properties in the area" [36 CFR § 800.4(a)(1)(iii)] The SHPO should be able to assist the agency in developing an initial list of such parties, each of whom, when contacted, may be able to identify others. In addition to contacting specific groups and individuals, the agency can also notify the public that it has initiated Section 106 review, through articles in local newspapers, media releases, or other appropriate mechanisms, soliciting any information or concerns members of the public may have about potentially affected historic properties.

C. Seek information from parties with knowledge or concerns.

People identified as having particular knowledge or concerns should be asked for any information they may have about affected historic properties and for any concerns about the undertaking's effects [36 CFR § 800.4(a)(1)(iii)].

Ways of seeking information

Local governments, Indian tribes, and historic preservation organizations may have official points of contact through which an agency can ask for such information. Tribes and other Native American groups may also have traditional cultural leaders who are highly knowledgeable about historic properties; seeking information from such leaders may require the assistance of a trained ethnographer. Contacting small public and private organizations and knowledgeable individuals may also require special efforts. Local historical societies and neighborhood organizations, for example, may not be familiar with government operating procedures, and may need help translating their information and concerns into terms that are meaningful to agency planning.

Those contacted should be made aware of Section 106 review and the way the agency's undertaking will be reviewed. They should be asked if they wish to be notified of agency determinations. They should also be advised that the Council oversees Section 106 review and that if they question the way the process is being conducted, they can request Council review of agency findings under 36 CFR § 800.6(e). Their views should be recorded and used in carrying out further steps in the process.

D. Determine whether "interested persons" exist.

As discussed earlier, the regulations give special roles in Section 106 review to "interested persons"; that is, organizations and individuals that are concerned with the effects of an undertaking on historic properties. The agency should apply the definition of "interested persons" to each party identified as having interests in or concerns about historic properties.

E. Coordinate identification and evaluation with interested persons.

The regulations require no specific form of coordination with interested persons during the identification and evaluation phase of Section 106 review [36 CFR §§ 800.4(b) and (c)], but the Council recommends that the agency seek their views, particularly where an interested person has jurisdiction over an area (e.g., a local government or a property owner), or has special knowledge of or interest in a property (e.g., an Indian tribe with an ancestral site, or a historical society with a historic building).

Notification if no historic properties exist

If it is determined that no historic properties exist in the area affected by the undertaking, the regulations encourage, although they do not require, the agency to "notify interested persons and parties known to be interested in the undertaking and its possible effects on historic properties and [to] make the documentation [that no historic properties exist] available to the public" [36 CFR § 800.4(d)]. Broad dissemination of "no property" findings is encouraged, because public review may reveal historic properties inadvertently missed in the identification effort and help avoid delays later in the undertaking.

F. Coordinate effect determination with interested persons.

If historic properties are identified, the agency must apply the criteria of effect [36 CFR § 800.9(a)] to the properties, "giving consideration to the views, if any, of interested persons" [36 CFR § 800.5(a)]. If the agency determines that the undertaking will have no effect on historic properties, it must notify the SHPO and "interested persons who have made their concerns known," and make the finding "available for public inspection" [36 CFR § 800.5(b)]. If the agency determines that its undertaking will have an effect on historic properties, but that the effect will not be adverse, the agency can obtain the SHPO's concurrence and notify the Council with summary documentation, which must be made available for public

inspection [36 CFR § 800.5(d)(1)(i); also *see Section 106, Step-by-Step*]. Alternatively, the agency can provide the determination to the Council together with the views of "affected local governments, Indian tribes, Federal agencies, and the public, if any were provided, as well as a description of the means employed to solicit such views" and notify the SHPO [36 CFR § 800.5(d)(1)(ii)]. Figure 5 describes methods by which this documentation can be made available to the public [36 CFR § 800.8(a)(5)].

Figure 5: Making documentation available to the public

When an agency determines that no historic properties are present, that no effect will occur on historic properties, or that an effect will occur but that it will not be adverse, the regulations require that documentation of the determination be made available to the public [36 CFR § 800.4(d); 800.5(b); 800.5(d)(1)]. This documentation should identify the undertaking and include a description of the agency's efforts to identify historic properties. It should describe any such properties involved, and discuss how (if at all) the undertaking will affect them, with reference to the criteria of effect and adverse effect as applicable.

How the documentation is made available to the public can vary with the scale and nature of the undertaking and the extent of agency reporting responsibilities under authorities other than Section 106. Where environmental documents are made available for public review under NEPA, for example, notification of the agency's determination can be included in such documents. For routine or small scale undertakings, it may be sufficient simply to retain documentation in agency files available for inspection by the public, as long as such documentation is also provided to the SHPO and interested persons as required. Documentation made available to the public should include notification to reviewers of their opportunity to request Council review of the agency's finding [36 CFR § 800.6(e)(1)].

In some cases, the historic property involved may be vulnerable to vandalism or other damage if their locations or exact descriptions are revealed. Section 304 of the National Historic Preservation Act (16 U.S.C. 470w-3) directs Federal agencies, "after consultation with the Secretary [of the Interior] [to] withhold from disclosure to the public, information relating to the location or character of historic resources" under such circumstances. Procedures to follow in such cases are outlined in the Department of the Interior's Guidelines for Federal Agency Responsibilities under Section 110 of the National Historic Preservation Act (53 FR 4727-46; February 17, 1988). Deciding on whether and how to withhold such information requires careful balance between the need to protect the property from damage, and the need to provide the public with sufficient information to participate effectively in the Section 106 process. A commonly used compromise approach involves placing location and detailed descriptive information in confidential appendices to the documentation made available to the public, limiting the availability of such appendices to those with a definite need to know, and providing only general information on the location and nature of historic properties in the material openly available to the public.

In order to consider the views of interested persons, the agency should advise them of the agency's initial conclusions, either orally or in writing, and request their reactions. The agency should explain the rationale for its determination, with appropriate background data.

G. Consult with interested persons about adverse effects.

Mandatory and optional consulting parties

If it is determined that the undertaking will result in adverse effects on historic properties, the regulations provide for interested persons to participate in consultation about ways to avoid or reduce such effects. Some interested persons who so request must be invited to participate, and in some cases to concur in agreements. These include a local government representative within whose jurisdiction the undertaking will occur, an affected applicant for or holder of a grant, permit, or license, and the owner of affected land (see Figure 2). An Indian tribe whose lands are affected by an undertaking must be invited both to participate in consultation and to concur in any agreement. Other interested persons should be allowed to participate in consultation to the extent feasible, but their participation is conditional to the agreement of the responsible Federal agency, the SHPO, and the Council (where the Council participates in consultation).

Inviting interested persons to participate in consultation

The agency should contact any interested persons it has identified, or who have identified themselves, and ask them if they wish to participate in the consultation. Participation can occur at a number of different levels. A participant can be a full consulting party, taking part in meetings that may take place as part of the consultation process, receiving copies of pertinent correspondence, and negotiating actively with the agency, SHPO, and other parties. Consulting parties should usually be invited to concur in any agreements reached, particularly if an agreement specifies actions that these persons will take. At a less intensive level of involvement, participants may take part in consultation only with respect to particular aspects of the undertaking, or to effects of particular kinds or effects on particular properties. The agency may choose not to ask such participants to concur in agreements, or the participants themselves, once they have expressed their own views, may choose not to concur in any agreements.

Those who participate as consulting parties should be provided with the documentation set forth in 36 CFR § 800.8(b) when consultation is initiated. The consultation thereafter can vary based on the nature of the undertaking and its effects, the agency's planning system, the project schedule, and other factors. The fact that a person is a consulting party does not automatically mean that he or she must be included in every telephone conversation or informal meeting. Consulting parties are free to discuss issues among themselves without involving other consulting parties, but must involve other consulting parties in such formal actions as the conduct of public meetings, on-site inspections of areas pertinent to their interests, and the exchange of documents.

All parties should approach consultation as a good-faith effort to resolve conflict between historic preservation interests and the needs of the undertaking, by exploring alternatives to avoid or reduce the adverse effects of the undertaking. Consultation should be carried out with the intent of reaching an agreement acceptable to all consulting parties, and of ensuring that the concerns of all other participants have been identified, thoughtfully considered, and if possible, resolved.

If a consulting party other than the Federal agency, the SHPO, or the Council will not execute or concur in a Memorandum of Agreement (MOA), the agency, SHPO, and Council are not prohibited from executing it. Objections by interested persons to MOAs in preparation, however, should be given full and careful consideration, whether or not such person are consulting parties.

Participation in review by the public in general

The public in general must be given "an adequate opportunity...to receive information and express their views" [36 CFR § 800.5(e)(3)] during the consultation. This can be done in a variety of ways, again depending on the scope of the project and its effects, the agency's planning process, and other factors. Pertinent documentation should be made available for public inspection, and the status of Section 106 consultation should be reported at public hearings or meetings or in pertinent documents that are part of its projects planning or environmental review activities. Meetings with particular groups or individuals, or general public meetings, may be held by the agency, the SHPO, or the Council [36 CFR § 800.5(e)(3)].

H. Report the conclusion of Section 106 review to interested persons.

The Council recommends that interested persons be notified of the conclusion of Section 106 review once the agency has completed the process and, where applicable, obtained the Council's comments.

VII. Documenting public participation

The reason for documenting the agency's public participation efforts is to permit reviewers, including Federal courts in the event of litigation, to review the record and determine whether the agency's efforts have been adequate and reasonable. Generally, the Council has found it easiest to review documentation organized around a chronological summary that outlines the steps taken to provide for public participation and the results of these actions, along with reports, copies of written comments, summaries of meetings, and similar supporting documents attached where pertinent.

Documentation when no historic properties are found or no effect is determined

The regulations do not require that specific documentation of public participation be prepared when no historic properties are found, or when the undertaking is found to have no effect on historic properties. It has been the Council's experience that it is prudent, however, to describe as appropriate public participation efforts and their results, in identification reports, environmental documents, agency files, and elsewhere, as well as in the documentation provided to the SHPO and others pursuant to 36 CFR §§ 800.4(d) or 800.5(b).

Documentation when no adverse effect is determined

Where a "no adverse effect" determination is reported to the Council, specific documentation of public participation efforts is required by 36 CFR § 800.8(a)(5). Where "adverse effect" is determined and further consultation results in an MOA, the agreement when submitted to the Council must be accompanied by "a summary of the views of. . .any interested persons" [36 CFR §

800.8(c)]. If an agreement is not reached and the Council's comments on the undertaking are sought as a result, the agency must document its "efforts to obtain and consider the views of affected local governments, Indian tribes, and other interested persons," together with "copies or summaries of any written view submitted" by such persons or others [36 CFR §§ 800.8(d)(8) and 800.8(d)(10)].

Information to include in an agency's record of public participation

Generally speaking, a reviewer of an agency's record of public participation should be able to answer the following questions from the available documents:

- What general efforts did the agency make to ensure that the public was aware that the undertaking was being planned, and that Section 106 review was being carried out?
- What particular elements of the public were contacted for information or to identify concerns? Why were these particular elements of the public chosen over others?
- What groups and individuals, if any, were identified as interested persons? How were interested persons involved in the Section 106 review process?
- What concerns were identified, and what was done about these concerns?

VIII. Approaches to situations involving numerous interested persons

Where a large undertaking is reviewed under Section 106, with widespread potential effects or many alternatives, it is possible that large numbers of people and groups request the opportunity to participate as interested persons. The regulations do not require that all interested persons be invited to be consulting parties, but they do require that persons falling into certain categories be invited. As a result, it is possible for the number of consulting parties to become quite large. For example, a large project with many alternatives could affect hundreds or even thousands of landowners, who must be invited to be consulting parties if they so request [36 CFR § 800.5(e)(1)(iii)].

Developing strategies to provide for large numbers of interested persons

Agency public participation processes should be designed to provide for large numbers of consulting parties, as needed in a balanced and reasonable manner. Agencies should consult with SHPOs and the Council about ways to keep consultation from becoming unwieldy. Some possible strategies include

- distinguishing carefully between formal consulting parties and other interested persons, including in the former category only those required to be accorded consulting party status by the regulations and those whose participation clearly will advance the objectives of Section 106 [36 CFR § 800.1(c)(2)];
- requesting that consulting parties name one or a few representatives to take an active role in consultation on the parties' behalf;

- using public information meetings, workshops, or similar devices to identify major interest groups and their representatives in consultation or other forms of participation;
- breaking up the process of review so that it addresses different alternatives or different kinds of effects at different times, allowing participants to seek resolu tion of particular concerns without having to participate in consultation regarding the entire undertaking; and
- limiting the number of consulting parties asked to concur in agreements to those with key interests in or concerns about the undertaking.

IX. Public participation in Programmatic Agreement development

The regulations permit agencies to develop "Programmatic Agreements" (PAs) with the Council, covering entire agency programs, in lieu of review of individual undertakings [36 CFR § 800.13]. PAs are appropriate where a program results in undertakings that have repetitive effects on historic properties, where effects cannot be fully determined in advance of Federal decisionmaking where non-Federal parties have major decisionmaking responsibilities, and where general land-management planning or routine Federal installation management is involved. Under 36 CFR § 800.13(c), the Council is responsible for arranging for public involvement "appropriate to the subject matter and the scope of the program."

Participation when a Programmatic Agreement is national in scope

Where a PA is national in scope, the Council may publish notice in the *Federal Register* or undertake other general notification that consultation has been initiated. This notification must occur early in the consultation process, but not before an initial draft agreement or at least an outline of issues to be considered is developed, so that respondents to the notice will be able to receive a document on which to comment. The Council also notifies organizations and other parties known or thought to be interested in the agreement's subject matter. Where a PA affects a smaller region or a single State, the Council uses press releases and similar devices, and direct mail contacts with potentially interested persons identified by the agency, the SHPO, and others, in lieu of or to supplement *Federal Register* publication. Public meetings may be held, and interested persons may be invited to consult and to concur in PAs.

Participation when PAs are used with programs of local governments

PAs are sometimes used with respect to programs for the rehabilitation of residential, commercial and industrial areas carried out by local governments using Community Development Block Grants and other funds provided through the Department of Housing and Urban Development (HUD). In such cases, the Council will normally regard the local government's fulfillment of the public participation requirements set forth at 24 CFR §§ 58.55 through 66 as sufficient to ensure public participation in PA development.

Including public participation provisions in PAs

Often, because of the programmatic nature of the activities covered by a PA, it may be difficult to identify some segments of the public who may have concerns about them, or to identify effects with much certainty at the time the PA is

developed. In such cases the PA itself must be designed to include provision for effective public participation in its implementation. The measures of adequacy for such a public participation program are generally the same as those applied to an agency public participation program under Part IV of these guidelines.

X. Conclusion

The Council values the views of the public on historic preservation questions and encourages maximum public participation in the Section 106 process [36 CFR § 800.1(c)(2)(iv)]. The Council encourages full integration of public participation under Section 106 review and the regulations with other agency programs of planning and public participation. Agencies should ensure that such programs make the public fully aware of historic preservation issues; fully elicit expressions of public interest, knowledge, and concern; and wherever possible resolve conflicts between agency mission requirements and the historic preservation interests held by members of the public. Members of the public are encouraged to view the opportunities afforded them by the regulations as opportunities to work with, rather than against, Federal agencies to ensure that the pursuit of agency programs does not cause undue damage to historic properties, but rather, where possible, results in the enhancement of such properties.

Attachment 6

ATTACHMENT 6:

SRF AGENCY/SHPO COORDINATION

[These do not substitute for 36 CFR 800.4 through 800.6]

(A) Initial project consultation.

(1) Early in a project's planning phase, when project alternatives are identified which have the potential to affect historic properties, if any are present, the SRF Agency should, in conformance with 36 CFR Part 800.4(a)(1)(ii), consult with the SHPO and request their views, comments and advice on: (a) what further actions may be necessary by the SRF Agency to further identify and evaluate historic properties; (b) the significance of all identified historic properties; (c) possible effects on historic properties; and (d) project alternatives and suggested mitigation measures where effects are likely.

(2) If within a thirty day period (as provided under 36 CFR Section 800.1(c)) the SHPO does not respond to the SRF Agency's request(s), the SRF Agency Shall proceed in accordance with 36 CFR 800.4, et. seq..

(B) Routine consultation.

Following initial contact, SRF Agencies should respond to the SHPO's views, comments and advice; shall take further actions as necessary to identify and evaluate historic properties and assess effects on them; and continue to consult and coordinate with the SHPO throughout the historic preservation review process. Where applicable, this review should be integrated with the SERP process (as defined in Attachment 1).

(C) Transmittal of decision documents.

(1) Prior to making a decision on a project, the SRF Agency shall notify the SHPO of measures it intends to incorporate in the project to avoid, minimize, or mitigate effects on historic properties, which must be consistent with any determinations made or agreements entered into by the SRF Agency pursuant to 36 CFR 800.4(d), 800.5(d), 800.5(e) (4), 800.5(e)(5), and/or 800.11(a) as applicable.

(2) The SRF Agency shall provide the SHPO with a copy of its final ER determination for all SRF projects that have involved consultation and coordination pursuant to 36 CR Part 800 et. seq. and the Programmatic Agreement among EPA, the Advisory Council on Historic Preservation, and the National Conference of SHPOs.

(3) In addition, the SRF Agency will routinely notify the SHPO that appropriate documentation regarding SRF 212 projects funded with EPA federal assistance that may affect historic properties is available whenever:

(i) A Draft ER document is finalized; or

(ii) Significant new information relevant to the project's environmental determination is identified, or significant changes to the project plan is made, following the issuance of a Final Determination (ER decision document), but prior to completion of construction,; or

(iii) A mandatory five-year reassessment of a previously issued environmental determination has been conducted on projects and, as requested or otherwise agreed between the SRF Agency and SHPO, provide the SHPO with copies of such documentation.

(4) Appropriate documentation should also be provided the SHPO at similar intervals for 319 and 320 projects funded with EPA federal assistance that may affect historic properties.

Attachment 7