

Recommended Approach for Consultation on Recovery of Significant Information from Archeological Sites

Synopsis

In accordance with Secs. 800.5 and 800.6 of its revised regulations (36 CFR part 800, "Protection of Historic Properties," published [May 18, 1999]) implementing Section 106 of the National Historic Preservation Act of 1966, the Advisory Council on Historic Preservation is publishing a recommended approach for consultation by Federal agencies, State Historic Preservation Officers, Tribal Historic Preservation Officers, and others on the effects of Federal, federally assisted, and federally licensed or -permitted undertakings on archeological sites. ACHP has determined that issuance of this guidance is consistent with ACHP's revised regulations. The full text of the guidance is reproduced under the Supplementary Information section of this notice.

Dates, Addresses, and Contact Information

Dates

This guidance is effective on June 17, 1999.

Addresses

Those wishing to comment on this guidance should direct such comments to: Executive Director, Advisory Council on Historic Preservation, Old Post Office Building, 1100 Pennsylvania Ave., NW, #803, Washington, DC 20004; Fax (202) 606-8647; e-mail achp@achp.gov.

For further information, contact: Reid Nelson, Director, Office of Federal Agency Programs Advisory Council on Historic Preservation, Old Post Office Building, 1100 Pennsylvania Ave., NW., # 803, Washington, DC 20004, (202) 606-8505.

Supplementary Information

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

Background

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

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

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

Archeological Sites and Their Treatment

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

- The pursuit of knowledge about the past is in the public interest.
- An archeological site may have important values for living communities and cultural descendants in addition to its significance as a resource for learning about the past; its appropriate treatment depends on its research significance, weighed against these other public values.
- Not all information about the past is equally important; therefore, not all archeological sites are equally important for research purposes.

- Methods for recovering information from archeological sites, particularly large-scale excavation, are by their nature destructive. The site is destroyed as it is excavated. Therefore management of archeological sites should be conducted in a spirit of stewardship for future generations, with full recognition of their non-renewable nature and their potential multiple uses and public values.
- Given the non-renewable nature of archeological sites, it follows that if an archeological site can be practically preserved in place for future study or other use, it usually should be (although there are exceptions). However, simple avoidance of a site is not the same as preservation.
- Recovery of significant archeological information through controlled excavation and other scientific recording methods, as well as destruction without data recovery, may both be appropriate treatments for certain archeological sites.
- Once a decision has been made to recover archeological information through the naturally destructive methods of excavation, a research design and data recovery plan based on firm background data, sound planning, and accepted archeological methods should be formulated and implemented. Data recovery and analysis should be accomplished in a thorough, efficient manner, using the most cost- effective techniques practicable. A responsible archeological data recovery plan should provide for reporting and dissemination of results, as well as interpretation of what has been learned so that it is understandable and accessible to the public. Appropriate arrangements for curation of archeological materials and records should be made. Adequate time and funds should be budgeted for fulfillment of the overall plan.
- Archeological data recovery plans and their research designs should be grounded in and related to the priorities established in regional, state, and local historic preservation plans, the needs of land and resource managers, academic research interests, and other legitimate public interests.
- Human remains and funerary objects deserve respect and should be treated appropriately. The presence of human remains in an archeological site usually gives the site an added importance as a burial site or cemetery, and the values associated with burial sites need to be fully considered in the consultation process.
- Large-scale, long-term archeological identification and management programs require careful consideration of management needs, appreciation for the range of archeological values represented, periodic synthesis of research and other program results, and professional peer review and oversight.

Resolving Adverse Effects through Recovery of Significant Information from Archeological Sites

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

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

1. The archeological site should be significant and of value chiefly for the information on prehistory or history it is likely to yield through archeological, historical, and scientific methods of information recovery, including archeological excavation.
2. The archeological site should not contain or be likely to contain human remains, associated or unassociated funerary objects, sacred objects, or items of cultural patrimony as those terms are defined by the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001).
3. The archeological site should not have long-term preservation value, such as traditional cultural and religious importance to an Indian tribe or a Native Hawaiian organization.
4. The archeological site should not possess special significance to another ethnic group or community that historically ascribes cultural or symbolic value to the site and would object to the site's excavation and removal of its contents.
5. The archeological site should not be valuable for potential permanent in-situ display or public interpretation, although temporary public display and interpretation during the course of any excavations may be highly appropriate.
6. The Federal Agency Official should have prepared a data recovery plan with a research design in consultation with the SHPO/THPO* and other stakeholders that is consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, and the Advisory Council on Historic Preservation's Treatment of Archeological Properties: A Handbook. The plan should specify: (a) The results of

previous research relevant to the project; (b) research problems or questions to be addressed with an explanation of their relevance and importance; (c) the field and laboratory analysis methods to be used with a justification of their cost-effectiveness and how they apply to this particular property and these research needs; (d) the methods to be used in artifact, data, and other records management; (e) explicit provisions for disseminating the research findings to professional peers in a timely manner; (f) arrangements for presenting what has been found and learned to the public, focusing particularly on the community or communities that may have interests in the results; (g) the curation of recovered materials and records resulting from the data recovery in accordance with 36 CFR part 79 (except in the case of unexpected discoveries that may need to be considered for repatriation pursuant to NAGPRA); and (h) procedures for evaluating and treating discoveries of unexpected remains or newly identified historic properties during the course of the project, including necessary consultation with other parties.

7. The Federal Agency Official should ensure that the data recovery plan is developed and will be implemented by or under the direct supervision of a person, or persons, meeting at a minimum the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738- 44739).
8. The Federal Agency Official should ensure that adequate time and money to carry out all aspects of the plan are provided, and should ensure that all parties consulted in the development of the plan are kept informed of the status of its implementation.
9. The Federal Agency Official should ensure that a final archeological report resulting from the data recovery will be provided to the SHPO/THPO*. The Federal Agency Official should ensure that the final report is responsive to professional standards, and to the Department of the Interior's Format Standards for Final Reports of Data Recovery Programs (42 FR 5377-79).
10. Large, unusual, or complex projects should provide for special oversight, including professional peer review.
11. The Federal Agency Official should determine that there are no unresolved issues concerning the recovery of significant information with any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to the affected property.
12. Federal Agency Officials should incorporate the terms and conditions of this recommended approach into a Memorandum of Agreement or Programmatic Agreement, file a copy with ACHP per Sec. 800.6(b)(iv), and implement the agreed

plan. The agency should retain a copy of the agreement and supporting documentation in the project files.

Model Memorandum of Agreement

MEMORANDUM OF AGREEMENT FOR RECOVERY OF SIGNIFICANT INFORMATION

FROM ARCHEOLOGICAL SITE(S)

(list)

UNDERTAKING:

STATE:

AGENCY:

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

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

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

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

Whereas, to the best of our knowledge and belief, no human remains, associated or unassociated funerary objects or sacred objects, or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), are expected to be encountered in the archeological work;

Now, therefore, the [Federal Agency] shall ensure that the following terms and conditions, including the appended Archeological Data Recovery Plan, will be implemented in a timely

manner and with adequate resources in compliance with the National Historic Preservation Act of 1966 (16 U.S.C. 470).

OTHER TERMS AND CONDITIONS:

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

Agency Official:

date:

State Historic Preservation Officer:

date:

Tribal Historic Preservation Officer*: Official:

date:

Other Public or Private Entity:

date:

(as applicable)

[Attach Archeological Data Recovery Plan here]

<> Dated: May 7, 1999.

John M. Fowler,

Executive Director.

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The regulations define the term "THPO" as those tribes that have assumed SHPO responsibilities on their tribal lands and have been certified pursuant to Section 101(d) (2) of the NHPA. Nevertheless, remember that tribes that have not been so certified have the same consultation and concurrence rights as THPOs when the undertaking takes place, or affects historic properties, on their tribal lands. The practical difference

is that during such undertakings, THPOs would be consulted in lieu of the SHPO, while non-certified tribes would be consulted in addition to the SHPO.

Public Resource Type: Policy Recommendation

Topics

Section 106

Archaeology