STEP ONE: INITIATE THE CONSULTATION PROCESS

C: File Search Requests

Most commonly, consultation is initiated with the SHPO with what we call a "File Search." SHPO is happy to interact directly with agency designees, applicants and consultants at this stage to expedite consideration. This often does save time, but success is dependent on agreement between SHPO and the agency designee on the APE and identification needs. In the event of disagreement, direct agency consultation will be necessary since consideration of effects to Historic Properties is an agency responsibility under Section 106 and 36 CFR 800. This responsibility cannot be legally delegated to others with a very few exceptions specified in the law (e.g. Housing and Urban Development and CDBGs). If an agency authorizes a proponent to initiate consultation with the SHPO, the agency should so notify the SHPO (36 CFR 800.2(c)(4)). File Search results will normally be supplied only to personnel meeting Archaeological Resource Protection Act or Secretary of the Interior standards. There will be a fee for file searchs for compliance purposes. (See the File Search Fee schedule in the Appendices).

When requested, the SHPO will review project plans and inform the agency or agency designee in writing of any historic, archaeological, or Traditional Cultural Property sites known to be in the project area, the results of earlier surveys in the project area or the lack of such survey information. SHPO may also recommend areas that warrant survey or other additional identification efforts to be made by cultural resource professionals.

At a minimum, the file search request will result in a review of recorded information on known historical and archaeological site locations and on past surveys. This information is maintained in two primary components of the SHPO State Antiquity Database - CRABS (Cultural Resource Annotated Bibliography System) and CRIS (Cultural Resource Information System). The CRABS search will identify locations in the project area that may have received adequate previous survey, thereby providing background and eliminating unnecessary new survey expense. The CRIS search will identify all previously recorded cultural resources by site type and township/range/quarter section. SHPO may also be able to provide additional information from its known site leads and the National Register files. Most land managing agencies also maintain site lead and unpublished survey files which should be consulted when an undertaking occurs on public lands.

The agency should allow 15 days for a SHPO response to a File Search request, although in most instances the response time is much less. In emergencies or under special circumstances, SHPO may be able to provide some preliminary information over the phone. However, SHPO considers telephone responses to inquiries as informational only. Phone conversations, because of the danger of misunderstandings, do not represent formal comment or consultation; and such verbal requests for information, comment or recommendation need to be followed up in writing. Email is generally accepted.

SHPO has a brief File Search Request Form, which will expedite our getting information back to the agency or their consultants. The following information will be needed at the State Historic Preservation Office in initial requests for information and our recommendations (i.e., a File Search):

- name, address and telephone number of requester
- name(s) of the federal or state agencies involved in the undertaking;
- approximate date of proposed undertaking initiation;
- a description of the undertaking. Be sure to identify and explain any work that will involve disturbance of the ground, or the demolition or modification of existing buildings. If no ground disturbance, or demolition or modification of existing buildings will take place, please say so;
- a description of any previous disturbance and current land use and condition;

- legal location of the project: Township, Range and Section information. (This should also be written on the maps.) Even city projects need this information because computer searches are based on township, range and section;
- land ownership: federal /state /private
- tribal/private/other (explain)
- an image of the relevant USGS 7.5' quadrangle map showing the specific location of the project. (If the project is in a city, its location should also be shown on a city map.) The name of each map submitted for review must be indicated;
- the APE should be defined, with rationale, and delineated on the7.5' USGS map. Ancillary project locations such as access roads, borrow sources, staging areas etc. such be identified clearly;

- if an agency such as HUD or their designees are requesting information because of proposed demolition or rehabilitation of structures more than 50 years old, clear photographs (or excellent quality photocopies of photos) and an address will help us determine if the building is in the National Register files or if it has been recorded in a Historic District;
- include a description of cultural resources known or suspected by the agency or applicant to exist in the APE.

Project information submitted by the agency or agency designee is not usually returned but is kept on file at the SHPO. Submission of incomplete, illegible or confusing project information will result in delay of the review process until accurate information is obtained. It is the responsibility of the agency or agency designee to provide the project information in a timely fashion. Electronic submissions will be reviewed under the same time frame as any other submission and with the same considerations of clarity and completeness.

Once the results of the SHPO file search are in hand, the SHPO will provide that information to the agency or designee, usually with a recommendation regarding the adequacy of information or the need for further identification efforts. Further recommended identification efforts may include a field survey or suggestions for consultation with Tribes or others knowledgeable about the area. Please refer to the Confidentiality section below concerning release and use of File Search information.

It is important to note that the simple lack of previously recorded sites in an APE does not mean that an agency can assume there are no Historic Properties present or that their identification efforts are complete. In many cases, however, the SHPO may be able to recommend that a cultural resource survey is not necessary or other identification efforts are not warranted.

Under the regulations set out at 36 CFR800.4 the agency shall consider SHPO and others' recommendations concerning additional identification efforts. Recommended additional efforts to identify Historic Properties may include more background research, more consultation, oral history interviews, or field surveys. If, after receiving a SHPO recommendation for additional investigations the agency believes that additional consultation, inventory or other consideration of possible Historic Properties is not warranted, they should document a reasonable and good faith consideration of historic properties for further SHPO consultation (§800.4(d)). The documentation standards at 36 CFR 800.11(d) for a Finding of No Historic Properties Affected include: a description of the undertaking and federal involvement; a definition of the APE (with maps as necessary); steps taken to identify any cultural resources including persons, tribes and agencies consulted; and the basis for the finding that no properties are present or that none will be affected. Consultation with Tribes should not be simply a matter of providing project information to the Tribes. It should

be an active effort to learn about their concerns and include those concerns in agency planning. Consultation is meant to be an interactive movement towards a better solution.

Generally, SHPO will recommend survey in areas that have not been inventoried unless there are clear indications the APE has been previously heavily disturbed. In some cases, only a portion of the project will warrant inventory. Sensitive areas might include, but are not limited to, the following:

- the actual locations of known sites, and the area around known sites;
- areas around concentrations of sites;
- resources known to have been important to either historic or precontact populations;
- an unsurveyed historic section of town;
- areas of historic means of travel;
- certain landforms within areas near present or past bodies of water (places where people were likely to live, camp, work or build);
- areas on or around unusual or locally prominent landforms (places potentially used for burials, ceremonies or viewpoints); or
- areas for which there is no official record of sites but for which there are artifact collections, or documents or other information indicating the probable presence of sites.

It is important to remember that as archaeologists and historians continue to survey the state, we gain new information as to high and low probability locations for sites. This may mean those geographic areas and types of landforms once thought to have a low potential for containing sites may have a higher potential for containing sites than previously realized and vice-versa. This change in information will ultimately be reflected in the project reviews. Thus, areas not requiring a survey now or in the past may turn out to require a survey at some point in the future. Other areas formerly conceived to have high potential, may sub sequentially be determined to have low potential. Moreover, if existing **previous inventory is more than ten years old**, its usefulness needs to be reviewed for changing standards, changing exposures of buried sites, and changing integrity of structures. Since cultural resources are considered historic once they are 50 years old, some sites, buildings, structures or features, which were not recorded in the past, may have become historic in the intervening time and now require consideration.

<u>The passage of time may also call for a reassessment of cultural resources previously determined Eligible or Not Eligible (36 CFR 800.4(c))</u>.

The following circumstances are examples where the SHPO will, in most instances, NOT recommend survey:

- areas with previous adequate survey and reporting sufficient to document "no properties";

- the project involves work only in an existing constructed road ditch, or road pavement and shoulders (note that a distinction is made between existing ditches/shoulders and the legal description of the right-of-way which may or may not be entirely disturbed);
- temporary light fencing activities;
- the project is located on artificial embankment or fill/cut or other area previously substantially modified;
- the project is in an area or is of a type specified in a formal agreement recognizing its low potential to affect historic properties; or
- the project itself is unlikely to affect cultural resources. Aerial chemical weed control projects might be an example.

These criteria are subject to reinterpretation and modification by the SHPO as the databases and our resource knowledge and understanding of potential impacts grows. For example, ground disturbance in plowed fields is a subject of ongoing review and discussion. Our current belief is that plowed fields warrant inventory except in areas of very limited soil deposition, for example on upland glacial till. While disturbing shallowly buried archaeological deposits, plowing may also reveal otherwise buried sites with intact cultural deposition below the plow zone. Another example where ideas about appropriate levels of inventory are in development is prescribed fire management. The impact of low intensity controlled burns on cultural resources is currently understood to be selective and therefore identification efforts may be directed only towards those resources that would likely be impacted by burning. At the same time, research is needed to better determine the range of impacts from prescribed burn. Moreover, in some cases while it may be that prescribed fires can be justifiably argued to have limited impact on certain kinds of sites, a “prescribed” fire that gets out of control may have significant impacts. Conditions to control a prescribed fire must be met and promises kept before an agency can conclude that it has sufficiently considered the potential impact of prescribed fire on cultural resources. Failure to meet prescriptions or protection of cultural resources as stipulated in a prescribed fire plan would not constitute compliance.