

**GREAT SACANDAGA LAKE
HISTORIC PROPERTIES MANAGEMENT PLAN
FULTON, HAMILTON, AND SARATOGA COUNTIES, NEW YORK**

September 2012

SHPO #03PR03020

Prepared for:

**STATE OF NEW YORK BOARD OF
HUDSON RIVER-BLACK RIVER REGULATING DISTRICT**

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GREAT SACANDAGA LAKE HISTORIC PROPERTIES MANAGEMENT PLAN

INTRODUCTION

Hartgen Archeological Associates, Inc. (HAA, Inc.) was retained by the Board of Hudson River-Black River Regulating District (the Regulating District or HRBRD) to provide a historic properties management plan (HPMP) for the Regulating District's activities at reservoir known as the Great Sacandaga Lake (GSL) in Hamilton, Fulton and Saratoga Counties, New York. The Federal Energy Regulatory Commission (FERC) issued a license (Project 12252-000) to the Regulating District on September 25, 2002. Under Section 106 of the National Historic Preservation Act of 1966 (Appendix A and 36 CFR Part 800, Appendix B), FERC is required to ensure the proper management of cultural resources that may be affected by its licensees. To meet these requirements, the Regulating District's FERC license mandates completion and implementation of this HPMP. The HPMP follows FERC's *Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects* (FERC 2002a).

The overall purpose of the HPMP is to provide an outline for the Regulating District's management of cultural resources that may have the potential to be impacted by the operation of GSL. The HPMP identifies the Regulating District's facilities and activities at GSL, identifies known and potential cultural resources in the vicinity, and assesses the effect of the Regulating District's activities on these resources eligible for listing on State and Federal Historic Registers. A major focus of the HPMP is educating Regulating District staff, landowners, and interested persons in the vicinity of GSL to ensure proper identification and management of cultural resources near the reservoir. The HPMP identifies activities that will not impact cultural resources and will not require consultation or mitigation. It also identifies activities that may impact cultural resources and provides a protocol for consulting with interested organizations and mitigating adverse impacts. Several organizations have provided input for this HPMP, including the New York State Historic Preservation Officer (SHPO), the St. Regis Mohawk Tribe, the Mohawk Nation, Brookfield Renewable Energy Group (Brookfield) formerly Erie Boulevard Hydropower, L.P., and FERC (Appendix C).

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BACKGROUND

Project Information

Great Sacandaga Lake comprises portions of Fulton, Hamilton, and Saratoga Counties (Map 1). The following sections describe the history of the reservoir and the Regulating District, and their current facilities and activities at the reservoir.

Great Sacandaga Lake

Great Sacandaga Lake (GSL) was created in 1931 by constructing the Conklingville Dam on the Sacandaga River. The project's primary purpose is to regulate the flow of water in the Hudson River to minimize flooding and augment low flows throughout the year. Northwest of the dam, the Sacandaga River drains 1,044 square miles (2,001 km²) of the southern Adirondack Park, including sections of Fulton, Hamilton, Saratoga, and Warren Counties (HRBRRD 1950). This watershed is primarily north and west of the reservoir. The Conklingville Dam is located on the northeast end of the reservoir and releases water into the smaller Stewart's Bridge Reservoir, which feeds the lower Sacandaga River. Approximately five miles (8 km) east of the dam the Sacandaga and Hudson Rivers converge. The Hudson River watershed is immediately east of the Sacandaga watershed.

GSL is a river regulating reservoir for the Hudson River watershed. In the spring, runoff is retained in the reservoir and the water is released gradually throughout the rest of the year. The reservoir fluctuates between a maximum target elevation of 768 feet (235 m) and minimum annual target elevation of 748 feet (228 m). The reservoir has a total capacity of almost 38 billion cubic feet (1.075 billion m³) of water. Over 33 billion cubic feet (0.934 billion m³) of its capacity is available for flood control and stream regulation. The surface area of the reservoir fluctuates between roughly 26,700 acres (10,805 ha) at full capacity (768 feet) and 19,950 acres (8,074 ha) at low capacity (748 feet). Consequently, 6,750 acres (2,732 ha) of reservoir shoreline is inundated during the spring and exposed during the winter (HRBRRD 1950, 2000).

Board of Hudson River-Black River Regulating District

The Regulating District was created in 1959 from the Hudson River Regulating District that was formed in 1922 and the Black River Regulating District that was formed in 1919. The Hudson River Regulating District was responsible for construction and operation of the Sacandaga Reservoir, now known as GSL. The reservoir was first proposed in 1895. The land was purchased in the late twenties and the construction of the Conklingville Dam was completed

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and the reservoir filled in 1931. The project construction cost was 12 million dollars, which was funded by downstream beneficiaries. Funding for the continued operation of the Regulating District and its facilities is from downstream beneficiaries, including hydroelectric plants that depend on water release from the Conklingville Dam and cities along the lower Hudson that receive flood protection benefits (HRBRRD 2003).

Regulating District Facilities at Great Sacandaga Lake

The main headquarters of the Regulating District is located in the City of Albany, Albany County, New York. In the GSL region, the Regulating District operates a field office and the Conklingville Dam. The Regulating District also owns the reservoir and the land that borders it. A site visit was conducted by HAA, Inc. archeologists on June 5, 2003 and the Regulating District's staff provided a tour of the Sacandaga facilities.

The Regulating District's Sacandaga field office is on the western shore of GSL on Bunker Hill Road north of the Village of Mayfield, Fulton County, New York. The field office consists of a two-story frame building with a basement (Photo 1). There are several outbuildings on the property including a garage. The grounds contain parking for over a dozen cars, lawn, and signs with information about the reservoir.

The Conklingville Dam is an earthen dam that spans the relatively narrow valley between Woodcock Mountain and White Mountain east of the hamlet of Conklingville, Saratoga County, New York (Photos 2 and 3). The Dam is 1,100 feet (335 m) long and 100 feet (30 m) high. It is 600 feet (183 m) wide at the base and 43 feet (13 m) wide at the top where it is traversed by County Road 8, Conklingville-Lynwood Road (HRBRRD 1950). On the north end of the dam is the outlet control structure, gates, canal, and spillway (Photo 4). The control house is a brick structure that contains instruments that monitor the elevation of the water in the reservoir and that control the operation of the release gates (Photo 5). North of the control house is the canal that provides water to the spillway and the E. J. West hydroelectric plant. The plant is operated by Brookfield and it is included in a separate FERC license and HPMP. The Regulating District also operates a single-story garage and equipment shed west of the dam on the north shore of the reservoir (Photo 6).

In addition to these facilities, the Regulating District has jurisdiction over the State property surrounding and including GSL. The total area of this property is 29,000 acres (11,733 ha), which includes 2,280 acres (923 ha) of dry land when the reservoir is at full capacity and 19,950 acres (8,074 ha) at the annual targeted low water level (HRBRRD 1950, 2000).

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The Regulating District constructed Batchellerville Bridge, which was completed in 1931 (Photo 7, Figs. 1 and 2). The bridge is approximately one half-mile long and spans the reservoir between Edinburg and Batchellerville. The bridge is not part of the Regulating District's facilities.

Regulating District Activities at Great Sacandaga Lake

The primary responsibility of the Regulating District at GSL is river regulation. The management goals and procedures for the reservoir are prescribed in the *Upper Hudson/Sacandaga River Offer of Settlement* (2000). This document consists of an agreement between almost thirty parties including the Regulating District, the Department of Environmental Conservation, beneficiaries such as Brookfield, and counties adjacent to GSL. The primary interests that the settlement addresses include flood prevention and flow augmentation to provide water for industry and improve sanitary conditions of the Hudson River.

In addition to river regulation, the Regulating District manages the State land surrounding the reservoir. The Regulating District maintains the shoreline of GSL by depositing riprap in areas that are susceptible to erosion (Photo 8). Additionally, the Regulating District provides permits to local landowners for access to State land bordering the reservoir (Photo 9). Landowners are required to comply with the Regulating District's regulations and restrictions regarding activities on State land. Permits are renewed annually. Beyond the State land surrounding the reservoir is private property zoned by local municipalities.

Another service that the Regulating District provides is access to historic documents that record activities in the region from the late 1920s and early 1930s at the time when the dam and reservoir were constructed. These documents include photographs of the construction of the Conklingville Dam and Batchellerville Bridge and records of grave relocations from cemeteries that were moved prior to constructing the reservoir (Figs. 1 and 2). The Regulating District often provides this cemetery information to local residents who are interested in their genealogy.

Archeological and Historical Background

The following section discusses information from existing documents and files that is relevant to the management of historic properties and cultural resources at GSL. It begins by discussing previously written documents that deal with historic properties and cultural resources management concerns and strategies that are specific to GSL. Next, previously reported archeological sites are inventoried, and the section ends with a description of cultural resource surveys that have been conducted in the vicinity of the reservoir.

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Previous Cultural Resource Documents

In 1996, the Niagara Mohawk Power Corporation produced the *Programmatic Agreement Among the Federal Energy Regulatory Commission, the Advisory Council on Historic Preservation, and the New York State Historic Preservation Officer, for Managing Historic Properties that may be Affected by Licenses Issuing to Niagara Mohawk Power Corporation, Beebee Island Corporation or Moreau Manufacturing Corporation for the Continued Operation of Fourteen Hydroelectric Power Projects in Upstate New York* (Programmatic Agreement, 1996). Although this document discusses general issues, policies, and guidelines concerning cultural resources that may be affected by hydroelectric plants in New York State, there are no specific references in the *Programmatic Agreement* to the E. J. West hydroelectric plant. In 2002, Brookfield, the current owner of the E. J. West plant, produced *Appendix A to the Programmatic Agreement*, which describes concerns associated with specific projects, including the E. J. West plant. According to *Appendix A*, “Mapping on file at the State Historic Preservation Office (SHPO) depicted 12 archeological ‘site areas’ (a 1-mile-diameter circle within which a site is located) within or along the perimeter of GSL” (2002:5). The document also indicates that the Conklingville Dam is potentially eligible for listing in the National Register of Historic Places.

The Regulating District’s FERC license issued September 25, 2002 also discusses similar cultural resource issues (FERC 2002b). The license states that “A review of the files of the New York State Historic Preservation Office shows that two mapped Native American cultural sites maybe in proximity to the shoreline of Great Sacandaga Lake,” and that “only two of twelve site areas within or along the reservoir shoreline are subject to possible erosion.”

Both *Appendix A to the Programmatic Agreement* and the Regulating District’s FERC license describe site areas. These site areas comprise land within a one-half mile (0.8 km) radius of any known archeological site. The site areas were derived from SHPO’s standard procedure of requiring archeological surveys for projects within one-half mile (0.8 km) of a site. Although some site areas contain part of the shoreline of GSL, this does not necessarily indicate that the actual archeological sites within the site areas are prone to erosion.

The archeological sites and site areas listed in these previous documents are based on files at SHPO. The quality of information in the site files is highly variable and the site locations are often generalized. These facts indicate that it is not appropriate to use the site files to accurately identify sites that are prone to erosion. An updated review of the site files at SHPO and the NYSM was completed during production of this HPMP. The findings and

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recommendations of the HPMP are based on the precise updated site file information rather than site locations and site areas described in older documents.

In addition to describing limited archeological site information, the previous documents recommend several management strategies, particularly the completion of an HPMP. This document fulfills the requirement for completion of an HPMP. The procedures described in the HPMP are sufficient to manage cultural resources at GSL that may potentially be affected by the Regulating District, and the procedures and recommendations of the HPMP supersede previous documents that pertain to cultural resource issues at the reservoir.

Known and Potential Historic Properties and Archeological Sites

Site file searches were conducted at the New York State Museum (NYSM) and SHPO to identify known archeological sites within 500 feet (152 m) of GSL. Files at SHPO were also investigated for structures and sites that are listed or have been determined to be eligible for listing on the National Register of Historic Places. These databases only include resources that have been reported and inventoried and are not a complete listing of historic resources in the area. There are many more sites and National Register eligible structures that have not been reported to SHPO or NYSM. The detail of the information on the known resources varies considerably. For example, some sites were reported based on accounts by early 20th-century residents and there is little known about the contents and exact location of these sites. On the other hand, some of the sites were located during recent surveys by professional archeologists and have been documented thoroughly.

Two resources located at the Conklingville Dam are in the site files. The E. J. West Hydroelectric Plant has been determined eligible for listing on the National Register of Historic Places. The plant is under a separate FERC license and is not a component of this HPMP. The bridge over the canal has been determined not to be eligible for listing. No other structures associated with the dam, such as the control house, have been inventoried. The rest of the dam should be assessed if any major alterations are proposed in the future. Although there is no record of an official assessment, *Appendix A to the Programmatic Agreement* indicates that the dam is National Register Eligible.

Previous Surveys

Four archeological surveys have been conducted within 500 feet (152 m) of GSL. Two of the surveys focused on lands surrounding Batchelerville Bridge. All of the surveys were conducted for work by the New York State Department of Transportation and three of them were performed by the New York State Museum (NYSM). HAA, Inc. completed the fourth.

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The surveys consist of Phase I archeological investigations, which include a Phase IA literature review and Phase IB field reconnaissance. The Phase IA literature review consists of background research and an assessment of potential cultural resources in an area, and the Phase IB archeological field reconnaissance consists of field testing to identify actual resources. If resources are identified during a cultural resources survey, a Phase II site evaluation can be conducted to determine if the resources are eligible for listing on the National Register of Historic Places. If the resources are determined eligible, a Phase III data retrieval operation can be conducted, which consists of excavation to mitigate impacts to significant cultural resources. This process is described in greater detail in the New York Archaeological Council's *Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State* (Appendix D).

Precontact Overview

Precontact occupation in New York began approximately 12,000 years ago and it is divided into several major cultural periods. The Paleo-Indian Period (10,000 to 7000 B.C.) was characterized by hunting and gathering and reliance on megafauna and other pleistocene resources. The Archaic Period (7000 to 1500 B.C.) was also characterized by hunting and gathering but subsistence patterns changed as pleistocene resources gave way to more modern species. Populations that began to grow in earnest during the Late Archaic continued to expand during the Transitional Period (1500 to 1000 B.C.), and steatite (stone) bowls were introduced. Horticulture and pottery manufacture were realized during the Woodland Period (1000 B.C. to 1600 A.D.), and the Contact Period (1600 to 1750 A.D.) was the time of sustained European and Native American cultural interaction.

Most known archeological sites are discovered in areas that have been plowed for agriculture or, less frequently, surveyed by archeologists previous to development. The Sacandaga region is generally mountainous with less agriculture and development than many other portions of New York State. Therefore, although known precontact sites within the Great Sacandaga region are sparse, this does not preclude the existence of more sites that have not been identified.

In fact, there is a high probability that many precontact archeological sites are submerged beneath GSL near the old channel of the Sacandaga River. This area was favorable for precontact occupation for two reasons. First, the river valley provided a natural transportation route for precontact hunters. It is well-documented that the valleys formed by the Hudson River, Lake George and Lake Champlain to the east were used as transportation routes during the contact period. Since the Sacandaga River is another major drainage that joins the Hudson east

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of the reservoir, it is likely that Native Americans traveling through the system of river valleys in New York would have often passed into the Sacandaga region.

Second, the river offered resources, especially fish, which were important to Native American subsistence patterns. Resources from both the Sacandaga River and the surrounding forests and mountains were available to occupants of the region that now contains GSL. Therefore, the shore of the river was an ecotone that offered an abundance of resources favorable to precontact people. Likewise, evidence suggests that a similar abundance of resources was available on the margins of wetlands (HAA, Inc. 2002). The Vlaie, a large swamp that was located in the southwest portion of what is now Great Sacandaga Lake, may have also been frequented by precontact groups.

Historic Overview

The region that now contains GSL had a relatively quiet history until the late 18th century. Wars between the French and British that dominated the early and mid-18th century and battles of the American Revolution were fought along early transportation routes in the major river valleys to the south and west. It wasn't until the end of these conflicts that settlement in the more mountainous Adirondack region began in earnest.

The most important original industries in the Sacandaga region took advantage of the area's vast forests. The Sacandaga River and the Vlaie provided an environment that attracted fur-bearing animals, and hemlock stands supplied the bark that was used to preserve hides. Therefore, tanning became one of the earliest industries in the area. A related industry that became prevalent in the Sacandaga area was leather glove manufacture. The remainder of the forests were lumbered. Sawmills were common in many small hamlets that developed in the area. Otherwise, some of the less mountainous terrain was used for agriculture, dairying, and shepherding.

PROJECT MANAGEMENT AND PRESERVATION GOALS AND PRIORITIES

The purpose of this HPMP is to manage potential impacts from the Regulating District's activities to known and unknown archeological sites and historic properties in the vicinity of the GSL. The HPMP should not impede safe and efficient operation of the reservoir or the Regulating District's facilities. The HPMP identifies Regulating District activities that may have a potential impact on cultural resources and those that have no impact. It defines procedures for contacting SHPO and Native Nations and mitigating potential impacts. It also provides a plan for continued communication with SHPO and other interested organizations regarding future activities that have not yet been planned, emergency activities, and accidental discoveries.

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ORGANIZATION OF RESPONSIBILITY

The following section outlines the key personnel and organizations that will ensure the proper implementation and continued operation of the HPMP. This includes Regulating District personnel who will be responsible for ensuring that the procedures outlined in the following Project Effects and Management Measures section are properly carried out. It also includes contacts at SHPO, Native Nations and Brookfield, who will be contacted when situations arise that require consultation with these organizations.

HPMP Coordinator

The Regulating District's Operations Engineer will serve as the HPMP Coordinator. This position is currently occupied by Michael Mosher. Should the current HPMP Coordinator not be able to fulfill the assigned duties, then another HPMP Coordinator will be appointed by the Regulating District, and SHPO, Native Nations and Brookfield will be notified within 60 days. The HPMP Coordinator will be the Regulating District's contact regarding all cultural resource issues at GSL. The HPMP Coordinator will also be responsible for completing the tasks outlined in this HPMP. The specific duties of the HPMP Coordinator are outlined in the following Project Effects and Management Measures section.

Correspondence with the HPMP Coordinator and the HPMP Administrator should be sent to the following address:

Hudson River-Black River Regulating District
350 Northern Boulevard
Albany, New York 12204
Telephone: (518) 465-3491, Fax: (518) 432-2485

HPMP Administrator

The Regulating District's Chief Engineer will be the HPMP Administrator. This position is currently occupied by Robert Foltan. Should the current HPMP Administrator not be able to fulfill the assigned duties, then another HPMP Administrator should be appointed by the Regulating District and SHPO, Native Nations and Brookfield should be notified within 60 days. The HPMP Coordinator will report to the HPMP Administrator concerning all cultural resource management issues and activities. The Administrator will supervise the Coordinator's activities to ensure efficient and appropriate management of issues regarding cultural resources at GSL.

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New York State Historic Preservation Officer

The New York State Historic Preservation Officer (SHPO) will have the authority to comment on Regulating District activities that may impact cultural resources. The specific circumstances that warrant consultation with SHPO will be outlined in the following Project Effects and Management Measures section. Correspondence with SHPO will be addressed to:

New York State Historic Preservation Officer
New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, PO Box 189, Waterford, New York 12188-0189
Telephone: (518) 237-8643, Fax: (518) 233-9049

Native Nations

The St. Regis Mohawk Tribe, the Mohawk Nation including the Mohawk Nation Standing Committee on Repatriation and Burial Rules and Regulations and the Stockbridge-Munsee Community Band of Mohicans will be notified by and consult with the Regulating District in the event that actual or potential Native American resources or remains are identified or could be impacted by ground disturbance activities. They will be provided 45 days to comment if ground disturbing activities are proposed or if Native American resources are uncovered by accident or affected by an emergency as stated in the Native American Graves Protection and Repatriation Act, Section 2(7). The Regulating District and their assigned cultural resource managers will consider the future recommendations of the Native Nations through their assigned Historic Preservation Officer or similar designee in relation to the management of known and yet to be discovered Native American archeological sites within State lands of the GSL. All correspondence with the St. Regis Mohawk Tribe and the Mohawk Nation will be copied to Tribal Historic Preservation Officer and Cultural Resource Coordinator, who will also be provided with a 45-day comment period.

Tribal Historic Preservation Officer (THPO)
St. Regis Mohawk Tribe (Federally Recognized)
412 State Route 37
Akwesasne, NY 13655
Phone: (518) 358-2272, Fax (518) 233-9049

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Cultural Resource Coordinator, c/o Mohawk Nation Council of Chiefs
Haudenosaunee Standing Committee on Repatriation and Burial Rules and Regulations
Akwesasne Mohawk Territory, Via P.O. Box 366
Roosevelt, NY 13683
Telephone: (518) 358-3381, Fax (518) 358-3488

Historic Preservation Runner
Mohawk Nation Council of Chiefs, Via P.O. Box 366
Roosevelt, NY 13683
Telephone: (518) 358-3381, Fax (518) 358-3488

Tribal Historic Preservation Officer, THPO
Stockbridge-Munsee Community Band of Mohicans (Federally Recognized)
N8476 Mo-He-Con-Nuck Road
Bowler, WI 54416
Phone: (715) 793-3970, Fax: (715) 793-4437

Brookfield Renewable Energy Group (Brookfield)

Brookfield will receive a copy of the annual report, which is described in the final section of this report. Correspondence will be sent to:

Compliance Manager, NY East Region
Brookfield Renewable Energy Group
US Operations
399 Big Bay Road
Queensbury, NY 12804
Telephone: (518) 743-2081

PRINCIPLES AND PROCEDURES OF IDENTIFICATION

Several circumstances outlined in the following Project Effects and Management Measures section require identification of archeological sites by Regulating District Staff. This section provides information that they will use to identify sites and ensure that they are managed according to the procedures outlined in this document. Additionally, Regulating District staff will undergo archeological training. The training will teach recognition of archeological artifacts, identification of archeological sites, and procedures that will be followed once sites are identified. Training will be repeated whenever a sufficient turnover of Regulating District staff occurs.

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In the broadest sense, an archeological site consists of materials that were deposited by humans sometime in the past. In the New York State Archaeological Council's *Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State* (Appendix D), a more specific definition including criteria for determining a site's eligibility for listing on the National Register of Historic Places is provided. Regulating District staff will not make determinations regarding the significance of an archeological site. This section describes the minimal materials that should be present to constitute an archeological site and warrant consultation with an archeological consultant and SHPO, which will make determinations regarding the significance of sites and recommendations for managing the sites.

Sites are generally categorized into precontact sites, which were left by Native Americans and historic sites, which were created by Europeans and other non-native people. Some sites may contain both precontact and historic components. These sites may have been occupied by Native Americans and Europeans simultaneously during the contact period, or they may simply have been occupied by these two cultures at different times.

Identifying Precontact Sites

Precontact sites may contain a variety of cultural materials. Chert or quartzite tools such as projectile points (arrowheads), scrapers, knives, and bifaces are indicative of precontact sites. Slivers and blocks of chert and quartzite known as flakes and shatter are byproducts of stone tool production and are generally plentiful at precontact sites. Rough stone tools and implements such as hoes, pestles, grinding stones, and nutting stones are also common. Animal bones from native diets are often present. Precontact site features may include hearths and postmolds. Hearths may contain ash or other discolored soil, and fire-cracked rocks are often found near hearths. Postmolds are stratigraphic patterns created by decayed wood. From the top they often appear as dark circular stains in subsoil, and they are rectangular in profile. Both features are often buried under topsoil and found just above subsoil. Precontact sites may also contain burials. The HPMP contains a contingency plan for human remains to be followed if human skeletal remains are found.

Identifying Historic Sites

Relative to precontact sites, historic sites are generally larger, more common, and contain more artifacts. Historic sites can contain a wide variety of materials, but ceramics, glass, clay tobacco pipes, nails, animal bone, shell, hardware, brick, mortar, coal, and slag are the most common. Miscellaneous items such as jewelry, coins, clay marbles, and toys are not unusual. Wood will be preserved under some environmental conditions. Common historic features

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include foundations, wells, middens, and privies. Foundations can be made of concrete, field stone or cut stone and can be dry-laid or mortared. Dark soils with a high organic content are good indicators of historic ground surfaces or privies.

PROJECT EFFECTS AND MANAGEMENT MEASURES

This section describes potential impacts that Regulating District activities have on cultural resources and identifies procedures that will be implemented to minimize negative impacts. It also identifies activities that have no impact on cultural resources.

Great Sacandaga Lake Level

The Regulating District's most important activity at GSL is regulating the level of the reservoir by controlling the outflow at the Conklingville Dam. Although there is minimal ground disturbance involved in regulating water levels, this activity has an indirect impact on cultural resources at GSL. When the reservoir is at an elevation of 771 feet (235 m), it covers 41.7 square miles (108 km²). At the low level elevation of 748 feet (228 m), the reservoir only covers 31.2 square miles (81 km²). Therefore, 10.5 square miles (27.2 km²) of land is inundated during the spring and is exposed during the winter (HRBRD 1950). As demonstrated by the archeological sites in and west of the Edinburg Town Park in Batchellerville, many archeological sites that are submerged during most of the year become exposed when water levels are low. When exposed, the sites can potentially be impacted by looting, use of site materials such as stones for foundations, ATV use, and the like. These impacts are somewhat reduced by the fact that the reservoir reaches its lowest levels in January, February, and March, which is well outside the period of time when the greatest number of people seeking recreation occupy the area. However, there is also a potential for submerged sites to be looted by divers during the summer.

To reduce the potential effects of looting and other disturbance on archeological sites when the reservoir is at a low level, the Regulating District will incorporate policies into the access permit system that clearly state that removing historic artifacts from GSL and the surrounding State land is forbidden. The Regulating District periodically produces a handbook that outlines the regulations for access permit holders. The latest document was printed in 2001 and is entitled, *A Handbook for Holders of Access Permits at Great Sacandaga Lake*. Permits must be renewed annually. The Regulating District will incorporate a section that discusses cultural resources into the next Handbook of Rules that is produced. The handbooks will include a brief description of the historic and archeological background of GSL. The section will focus on dissuading landowners from disturbing archeological sites by emphasizing the devaluation of the research potential of these sites that is caused by looting and other disturbances. The goal of the section will be to make landowners aware of the importance of preserving these sites. The

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revised handbooks with the information regarding archeological sites will be printed and distributed to permit holders after the adoption of the New Rules and Regulations for Access Permits of the Great Sacandaga Lake.

The handbooks will also describe the legal background and procedures regarding archeological sites. According to the New York State Education Law Section 233 (Appendix E), “No person shall appropriate, excavate, injure, or destroy any object of archeological and paleontological interest, situated on or under lands owned by the State of New York, without the written permission of the Commissioner of Education. A violation of this provision shall constitute a misdemeanor.” If the disturbance of archeological sites on State land surrounding GSL is evident, the HPMP Coordinator should be notified. The Coordinator will then report the incident to the State Police.

In addition to adding the cultural resources section to handbooks, the Regulating District continues to maintain educational information on its website <http://hrbrd.com/pdf/hpmpletter.pdf>. The information on the website will include a short summary of the HPMP’s background, purpose and preservation goals, Regulating District responsibilities, GSL project effect and management measures, access permit holder responsibility of New York State land, preservation of cultural resources and sites, and contact information for contacting the HPMP Coordinator.

The Regulating District will also continue to post signs with similar content at the Sacandaga Field Office and at reservoir information sign locations. The focus of these signs will be to educate reservoir visitors about the importance of preserving archeological resources and applicable laws.

Shoreline Repair

The Regulating District maintains the shoreline of GSL by depositing riprap in areas where erosion is evident. The riprap generally consists of large stones. This activity does not have an adverse impact on cultural resources and will continue without further consultation. In general, efforts to curb erosion have a positive effect because they prevent cultural deposits from eroding into the reservoir.

The Regulating District currently allows landowners with access permits to place rip rap on State land to prevent erosion along the shoreline. Rip rap is placed when the water level is below the area to receive the rip rap. Access permit holders who propose this type of project are required to obtain a work permit from the Regulating District. The procedure for which is outlined in Chart 2, “Procedures for review of proposed ground disturbance on State Land administered under the HPMP”. See the Charts located at the end of the HPMP for further

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information. To ensure that these activities do not have an adverse effect on cultural resources, access permit holders proposing to perform ground disturbance on State land (ground disturbance is defined as any excavation, earth removal, or relocation of materials performed by hand or machine) may be required to complete a Phase IB archeological field reconnaissance (Phase IB).

Please be aware that not all of the State land within the boundary of the GSL is considered historically sensitive by SHPO. The Regulating District will provide assistance to Access Permit Holders who propose ground disturbance by comparing the location of the access permit area to SHPO's map of sensitive areas for the GSL. SHPO's map can be viewed at <http://nysparks.com/shpo/online-tools/>. If the access permit area is near an area designated by SHPO as being historically sensitive, the Access Permit Holder may be required to have a Phase IB conducted according to guidelines described in the New York Archaeological Council's *Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State* (Appendix D).

If required, the expense of the Phase IB will be the responsibility of the Access Permit Holder and for most projects at the GSL for fieldwork, report writing, and possible laboratory analysis. No such study should be conducted by a non-professional. The Phase IB may consist of archeological testing in all areas where soil will be removed and all areas where it will be deposited.

The results of the Phase IB investigation will be submitted to the Regulating District as a letter report to be forwarded to SHPO. SHPO will comment in a letter regarding the findings to the Regulating District. If no additional archeological investigation is warranted after the Phase IB, then SHPO's letter will be submitted to the Regulating District and the work permit may be issued. If additional work is warranted by SHPO, then the access permit holder will have the option of completing the additional investigation or abandoning the project. The Regulating District will not approve a work permit to perform ground disturbance until it receives a letter regarding Phase IB findings from SHPO. As discussed in the beginning of this section, Phase IB surveys will not be required for routine shoreline protection measures performed by the Regulating District annually or if the access permit area is not within a historically sensitive area as determined by SHPO.

To provide the necessary background information for Phase IB investigations, the Regulating District has completed a Phase IA Literature Review for Great Sacandaga Lake and lands in its vicinity. The proposed contents of the Phase IA are listed in the Future Regulating District Projects and Surveys section of the HPMP. The Phase IA literature review was performed by Hartgen Archeological Associates, Inc. and is held on file at SHPO's office.

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In addition to a standard review of the Phase IA and Phase IB reports by SHPO, the Native Nations will also be provided with an opportunity to comment on the Phase IA report and the results of Phase IB investigations when precontact materials are discovered.

Also, the Regulating District will correspond with the New York State Education Department to ensure compliance with Section 233 of the New York State Education Law (Appendix E). One of the goals of this endeavor will be to create a streamlined process and protocol to assist access permit holders proposing disturbance on State land to complete the Section 233 permit process. The Regulating District will ensure that Section 233 permits are acquired for work permits issued in and after 2005.

Unauthorized Ground Disturbance on State Lands of the GSL

All Access Permit Holders who have performed unauthorized ground disturbance on lands of the GSL may be required to have a Phase IB archeological field reconnaissance performed on the area of land affected by the unauthorized ground disturbance. The procedure for which is outlined in Chart 3, "Procedures for review of unauthorized ground disturbance on State Land administered under the HPMP". If required, the expense of the study shall be the responsibility of the Access Permit Holder and will be conducted according to guidelines described in the New York Archaeological Council's *Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State* (Appendix D). The Phase IB could consist of shovel testing and will require services of a cultural resource consultant for fieldwork, report writing, and possible laboratory analysis. No such study should be conducted by a non-professional. The Phase IB shall consist of archeological testing in all areas adjacent to where soils were removed and all areas where soils were deposited.

The results of the Phase IB investigation will be submitted to Regulating District and SHPO as a letter report. SHPO will comment in a letter regarding the findings. If no additional archeological investigation is warranted after the Phase IB, then the Access Permit Holder will be required to perform remediation work to the area of State land affected by the unauthorized ground disturbance. If additional investigation work is warranted, then the access permit holder will complete the additional investigation or the Regulating District may revoke their access permit. The Regulating District will not provide a new access permit until all archeological investigation work, and remediation work is complete. See the Charts located at the end of the HPMP for further information.

Protection and Identification of Archeological Sites

Several circumstances may result in the identification of archeological sites by the Regulating District. These circumstances may include reports from local landowners or other parties or result from identification of archeological sites by Regulating District staff in the field. As discussed previously, Regulating District staff will be trained to identify archeological sites, and will use the information in the Principles of Site Identification section as an aid. Any staff member of the Regulating District who becomes aware of an archeological site through correspondence with another party, field observation, or other means will contact the HPMP Coordinator. All work, including erosion control, in the vicinity of the site will cease. The HPMP Coordinator will visit the reported site. If the HPMP Coordinator confirms that the find is an archeological site based on training and the descriptions provided in the HPMP, an archeological consultant will be contacted. The consultant will fill out an archeological site form for the site and assist the HPMP Coordinator in corresponding with SHPO. SHPO will advise the Regulating District regarding proper management of the site. If Native American materials are found, the St. Regis Mohawk Tribe, the Stockbridge-Munsee and the Mohawk Nation will be provided with a 45-day comment period to advise the Regulating District regarding proper management of the site. Management may entail actions including, but not limited to, filling or rip rapping or preventing future work in the vicinity of the site.

Additionally, the St. Regis Mohawk Tribe has expressed concern for the preservation of several previously reported Native American sites in the vicinity of GSL. Tribal representatives will conduct a site visit with Regulating District staff at GSL to observe current conditions in the vicinity of known Native American sites. Based on their observations, the representatives will advise the Regulating District regarding the best means of preserving the sites. The results of the site visit and subsequent management measures will be described in the annual report, which is discussed in the final section of the HPMP.

The St. Regis Mohawk Tribe and the Stockbridge-Munsee have also requested that access to information pertaining to Native American burial sites within the GSL be restricted to approved parties. Therefore, the location and details of known or potential burial sites will be kept strictly confidential and will not be released to the general public as determined by the Regulating District in consultation with Native Nations. Also, SHPO requests consultation with the Native Nations regarding sharing information on the locations of Native American burials which will enhance the ability to protect these locations from disturbance.

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Future Regulating District Projects and Surveys

As discussed above, the Regulating District has completed a Phase IA Report for the vicinity of Great Sacandaga Lake. The Phase IA report includes the following information:

- Environmental data and a discussion of its relevance regarding archeology in the area.
- A map showing soil types in the vicinity of GSL and a description of the most common soils.
- A map showing the locations of known precontact sites in the vicinity of GSL.
- A complete series of historical maps showing the vicinity of GSL. The extent of GSL at the maximum and minimum target elevation is overlaid on each map, and a description of each map that focuses on identifying resources that may remain intact near the shoreline is included. The maps have been produced at a large scale that will allow close examination.
- A detailed precontact background.

Aside from surveys associated with work proposed by access permit holders, there are no Phase IB Archeological Surveys proposed in association with the Regulating District's activities at the GSL. If future ground-breaking activities are proposed by the Regulating District, the HPMP Coordinator will notify SHPO, and if required, may obtain an archeological consultant to conduct a Phase IB archeological field reconnaissance for the area of potential effect. The results will be reviewed by SHPO. If Native American materials are found, the Native Nations will be notified. Sufficient time should be allowed between notification and commencement of the proposed project to complete any surveys or other tasks that are required.

In addition, if the Regulating District proposes any modifications to the Conklingville Dam, SHPO will be contacted. Although the dam has not been inventoried, it may be eligible for listing on the National Register of Historic Places. If modifications are proposed, the Regulating District will contact SHPO to make an official assessment of the dam's National Register status and provide input on the impact of new modifications to the dam's character and how to minimize any adverse effect.

General Maintenance

General maintenance activities including routine repair and replacement in kind can be completed at the Regulating District's Great Sacandaga Lake facilities without consulting with SHPO. For alterations on a major scale, especially involving ground-disturbing activities or major modifications to the dam, the HPMP Coordinator will consult with SHPO and Native Nations prior to beginning the project or work.

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Emergencies

In case of any emergencies at the Regulating District's facilities or on State land under the Regulating District's jurisdiction, the Regulating District can take all measures necessary to ensure the reservoir, bordering State land, and facilities are returned to a safe condition and efficient operation. The HPMP Coordinator will notify SHPO of any effect that the emergency or subsequent activities may have had on cultural resources on or nearby State property within seven days. SHPO will comment on activities resulting from the emergency that are undertaken after safe conditions and efficient operations have been restored. The Native Nations will be notified if precontact resources are affected.

Contingency Plan for Human Remains and Accidental Discoveries

If archeological sites or human remains are discovered as a result of any of the Regulating District's projects or on State land under the Regulating District's jurisdiction as a result of processes including but not limited to erosion and minor impacts by permit holders, all work shall cease immediately and the HPMP Coordinator will contact SHPO, which will advise the Regulating District on an appropriate course of action. If human remains are discovered, the Regulating District will notify the New York State Police. The Native Nations will be notified if the remains are Native American. Human remains will be treated according to local, state, and federal laws including the Native American Grave Protection and Repatriation Act (Appendix F).

SUMMARY, CONCLUSION, AND ANNUAL REPORT

In summary, the Regulating District has two major obligations described in the HPMP. First, it will discourage regional residents and visitors from disturbing archeological sites on the margin of GSL by including a discussion in the next printing of the permit handbook to educate permit holders about the importance of preserving these resources. Educational information will also be posted on the Regulating District's web site <http://hrbrd.com/pdf/hpmpletter.pdf>. Second, the Regulating District will notify SHPO of ground disturbing activities or dam modifications that are proposed in the future and will notify the Native Nations when precontact materials are discovered.

The HPMP also provides a protocol for dealing with emergencies and accidental finds. An overview of this procedure is provided in Chart 1. See the Charts located at the end of the HPMP for further information. A primary goal of the HPMP is the education of both Regulating District staff and landowners in the GSL region concerning the value and proper maintenance of archeological sites. The HPMP fulfills the obligations that FERC and its licensees have toward managing cultural resources under Section 106 of the National Historic Preservation Act of 1966.

To ensure continued implementation of the procedures outlined in this HPMP, the HPMP Coordinator will provide an annual letter report to the HPMP Administrator, SHPO, Native Nations, Brookfield, and FERC. The letter will be produced on the anniversary of the HPMP and will summarize procedures that the Regulating District followed each year to manage cultural resources that are potentially affected by its activities.

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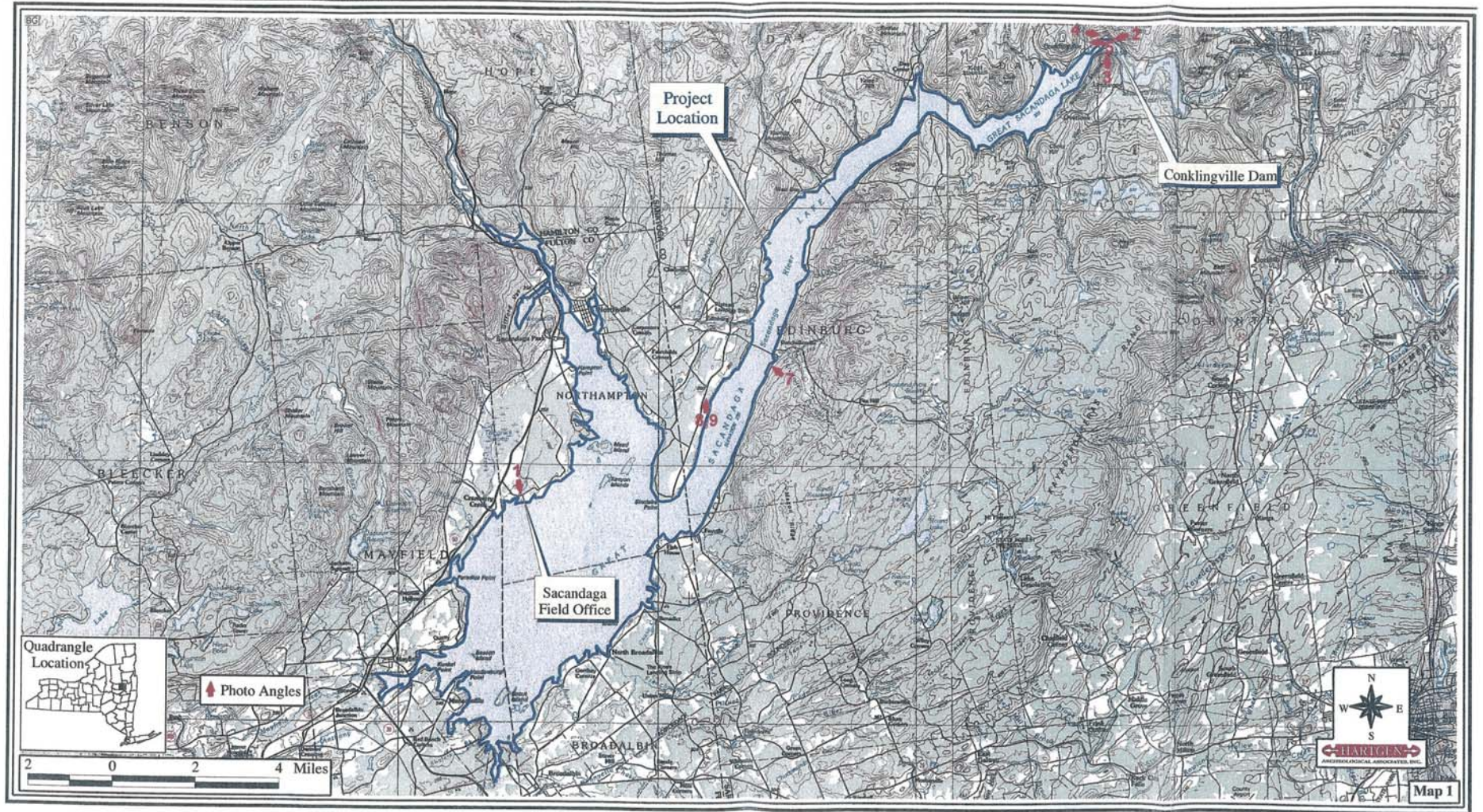
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MAPS

Historic Properties Management Plan for Great Sacandaga Lake



PHOTOGRAPHS



Photo 1. View west of the Regulating District's Sacandaga Field Office that consists of parking lots, the two-story office building on the left, and the garage and maintenance shed on the right. Great Sacandaga Lake is in the background.



Photo 2. View southwest of Great Sacandaga Lake behind the Conklingville Dam.



Photo 3. View north showing from left to right: Great Sacandaga Lake, the Conklingville Dam, Conklingville Lynnwood Road, the brick dam control house, and the larger brick E. J. West hydroelectric plant.



Photo 4. View northeast of facilities at the Conklingville Dam showing from left to right: the control house, the power canal, the spillway, the E. J. West hydroelectric plant, and Stewart's Bridge Reservoir.

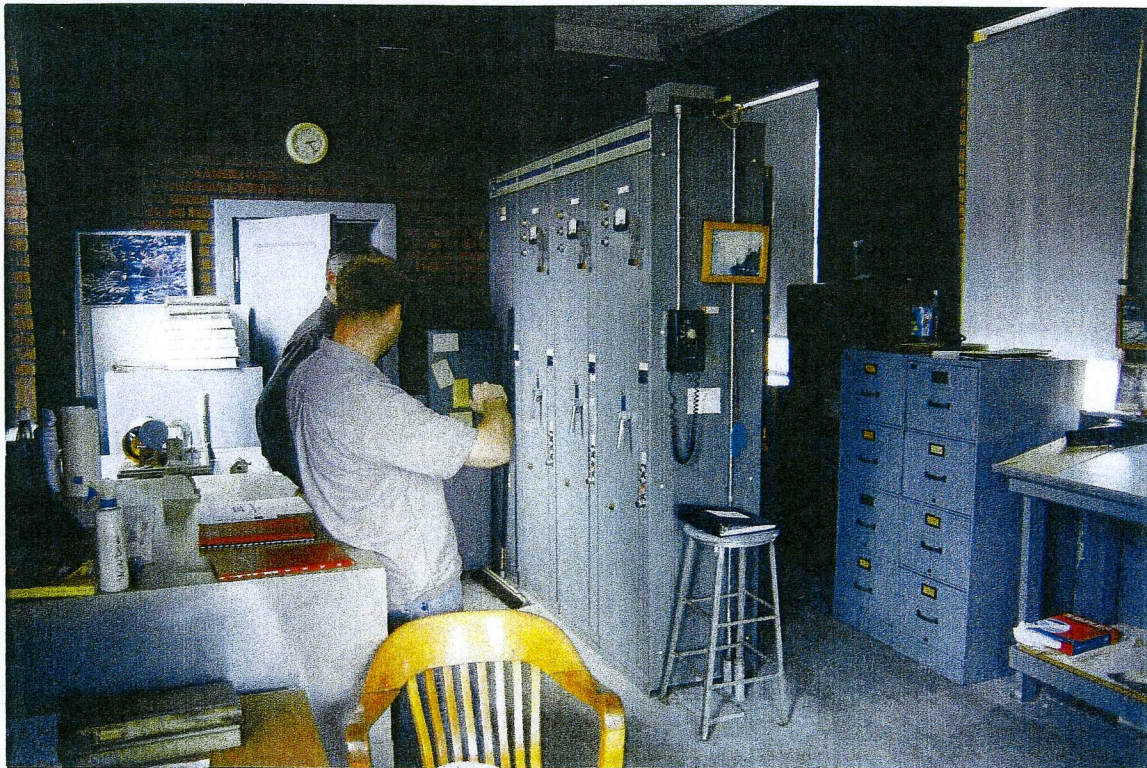


Photo 5. The interior of the Conklingville Dam control facility. The cabinets in the center control the gates and the instrument on the left graphs the level of Great Sacandaga Lake.



Photo 6. View southwest of the maintenance building west of the Conklingville Dam.



Photo 7. View northwest along Batchellerville Bridge.



Photo 8. View northeast of freshly-deposited rip-rap in an eroded area. The Regulating District routinely repairs shoreline erosion at Great Sacandaga Lake.



Photo 9. View northeast of a typical permit area on the shore of Great Sacandaga Lake. The man in the background is reading the permit information posted on a sign and the yellow stake in front of him is the border of state land. Stairs and floating docks are common installations in these areas.

FIGURES



Figure 1. Historical panoramic view southwest of Batchellerville Bridge construction. Structures that comprised part of Batchellerville stand beneath the new bridge on the left side (top). The older Batchellerville Bridge spans the Sacandaga River on the right (bottom) side.



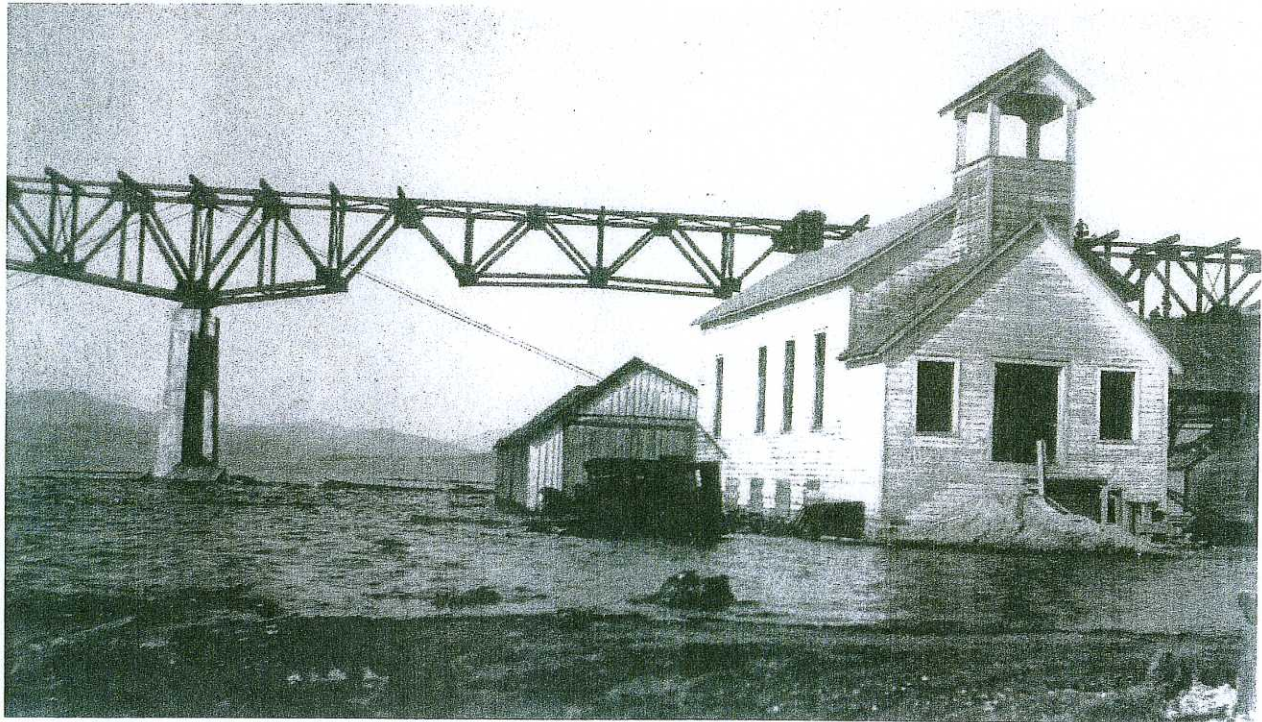


Figure 2. Historical view north of the Batchellerville Methodist Church. Water surrounds the foundation as the reservoir is filled. The newly constructed Batchellerville Bridge is in the background.

TABLES

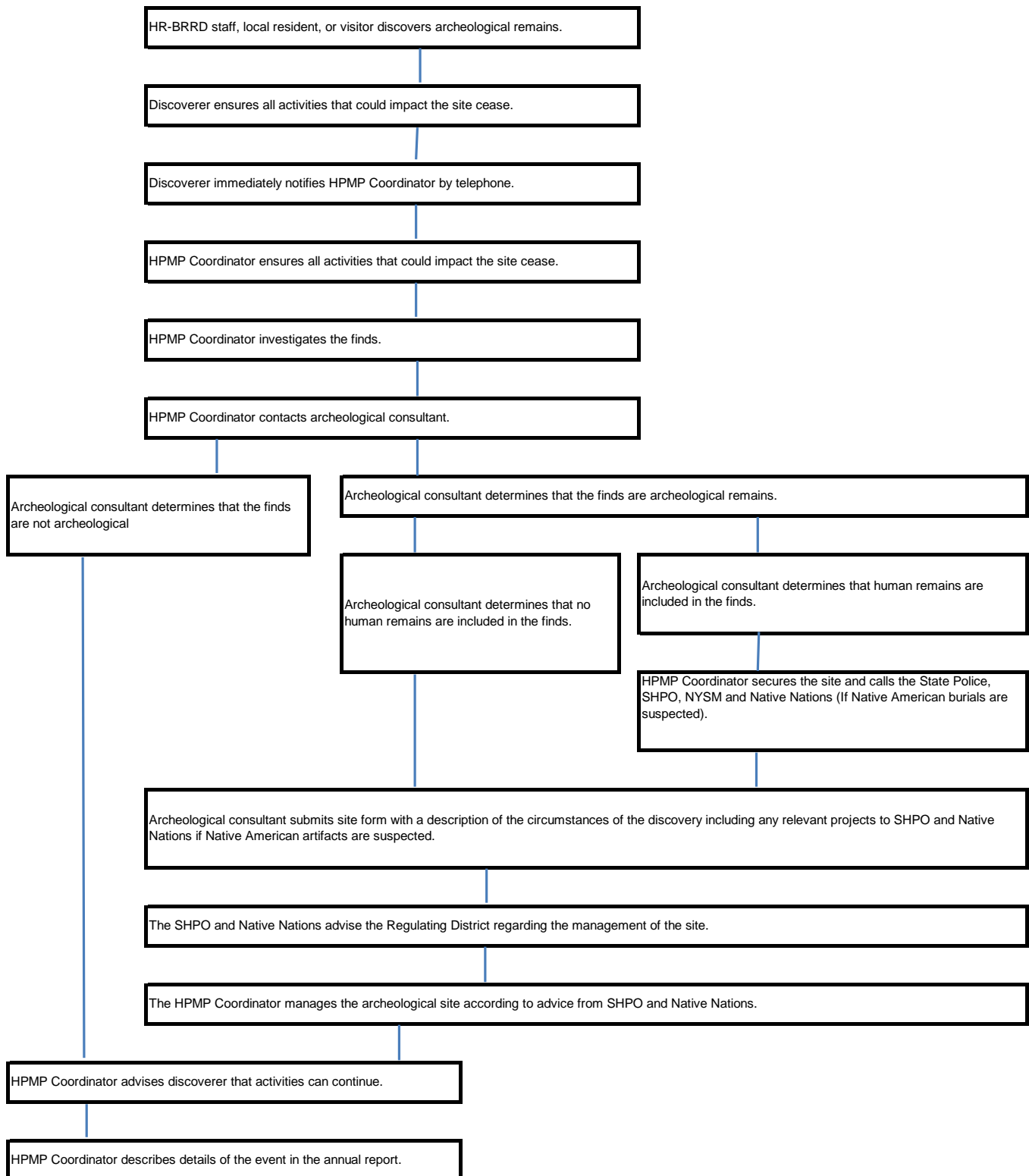
Great Sacandaga Lake Historic Properties Management Plan Counties, Towns, and Villages

County	Town	Village
Fulton	Broadalbin	
	Mayfield	Mayfield
	Northampton	Northville
Hamilton	Hope	
Saratoga	Day	
	Edinburg	
	Hadley	
	Providence	

CHARTS

Historic Properties Management Plan for the Great Sacandaga Lake

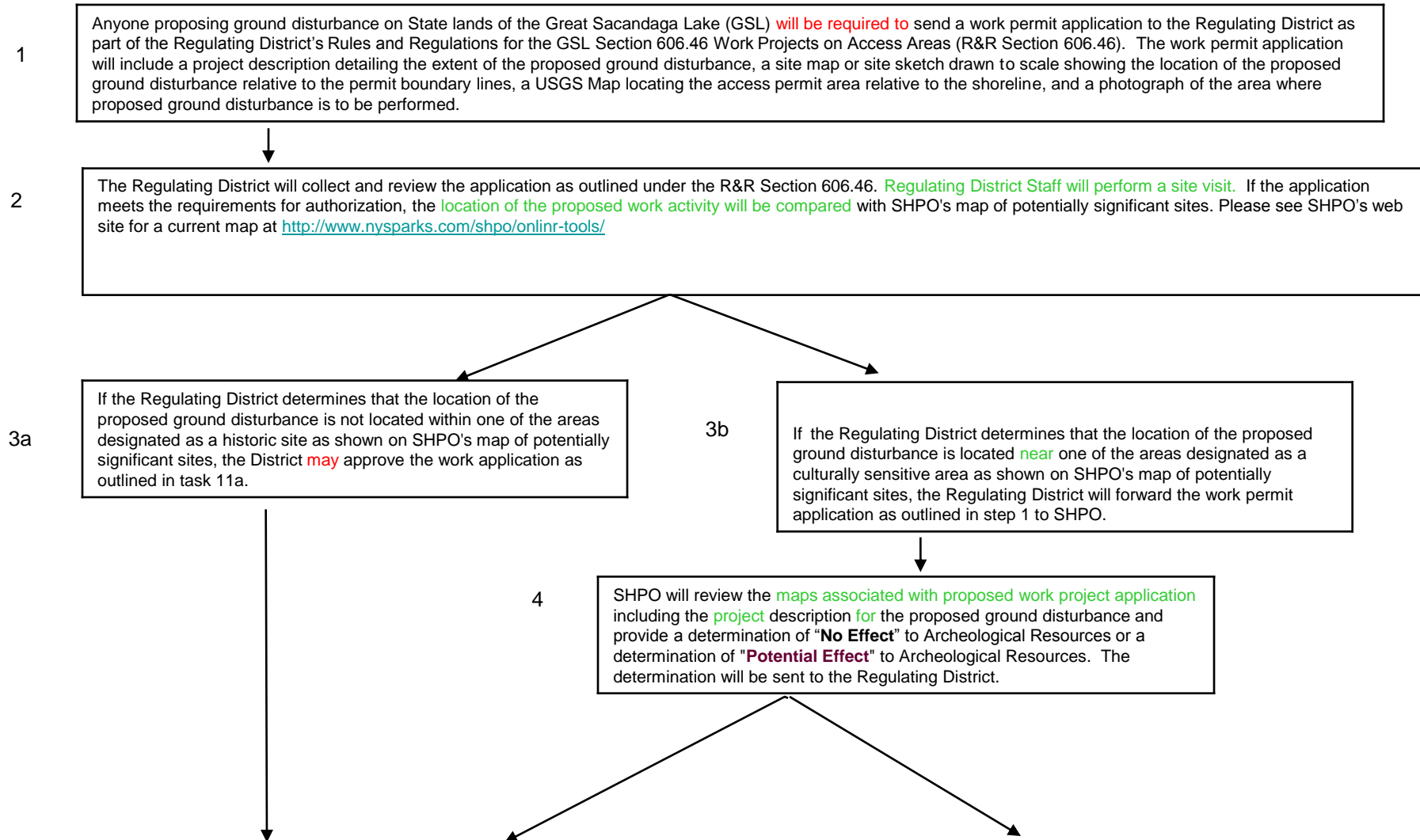
Chart 1 Procedure for Managing Emergencies and Accidental Archeological Discoveries



Historic Properties Management Plan for the Great Sacandaga Lake

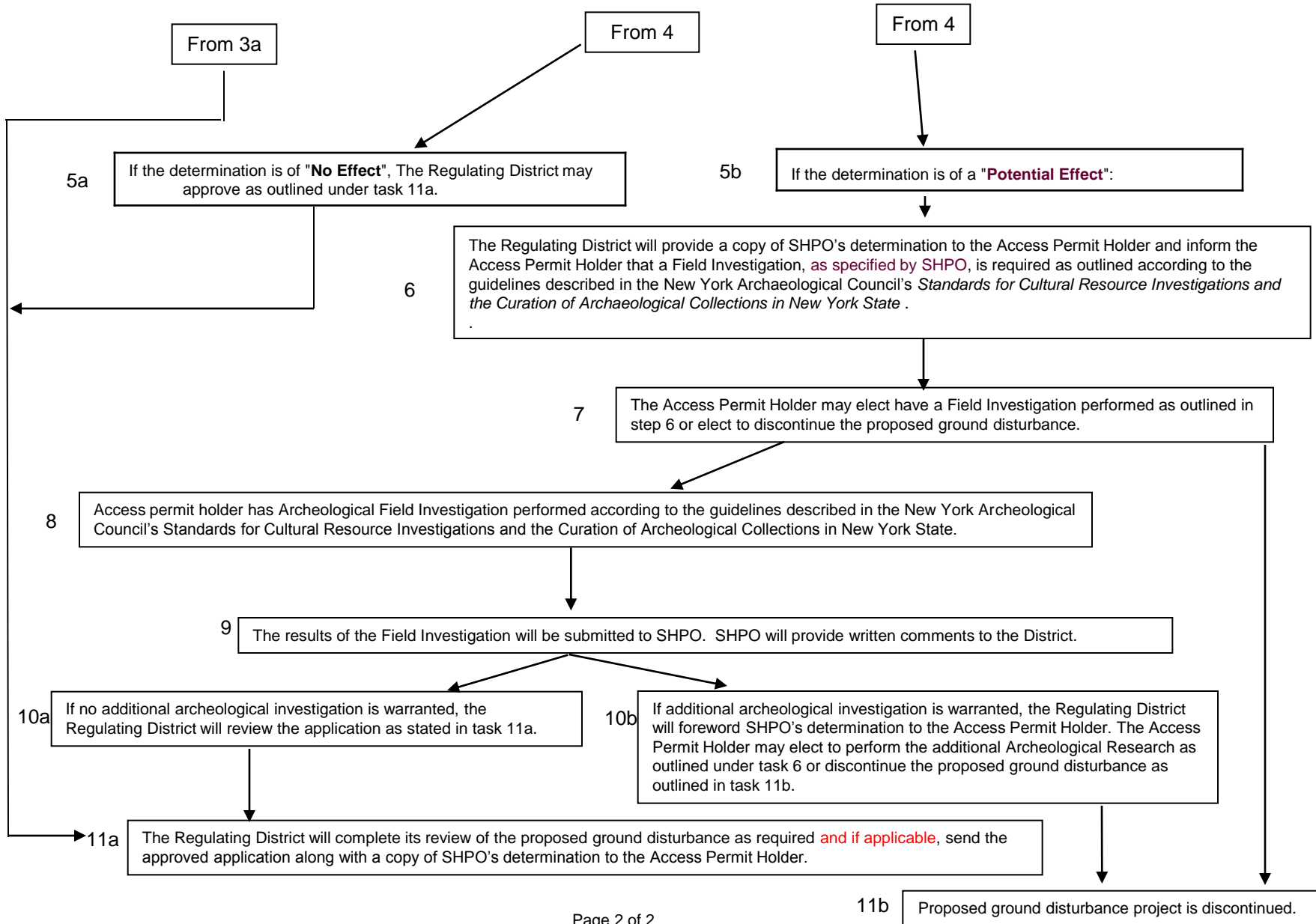
Chart 2 Procedures for Review of Proposed Ground Disturbance on State Land Administered Under the HPMP.

The procedures are as follows:

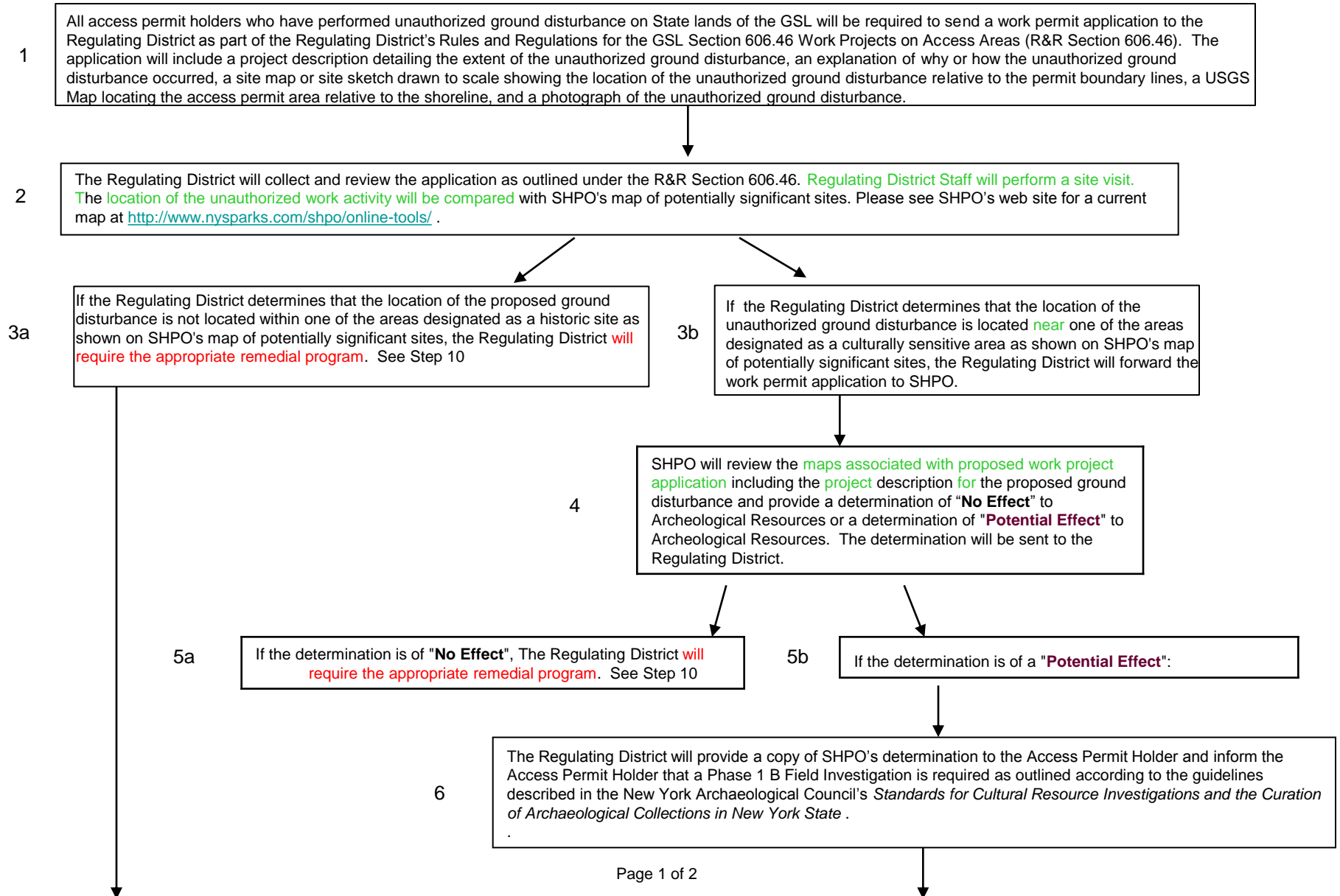


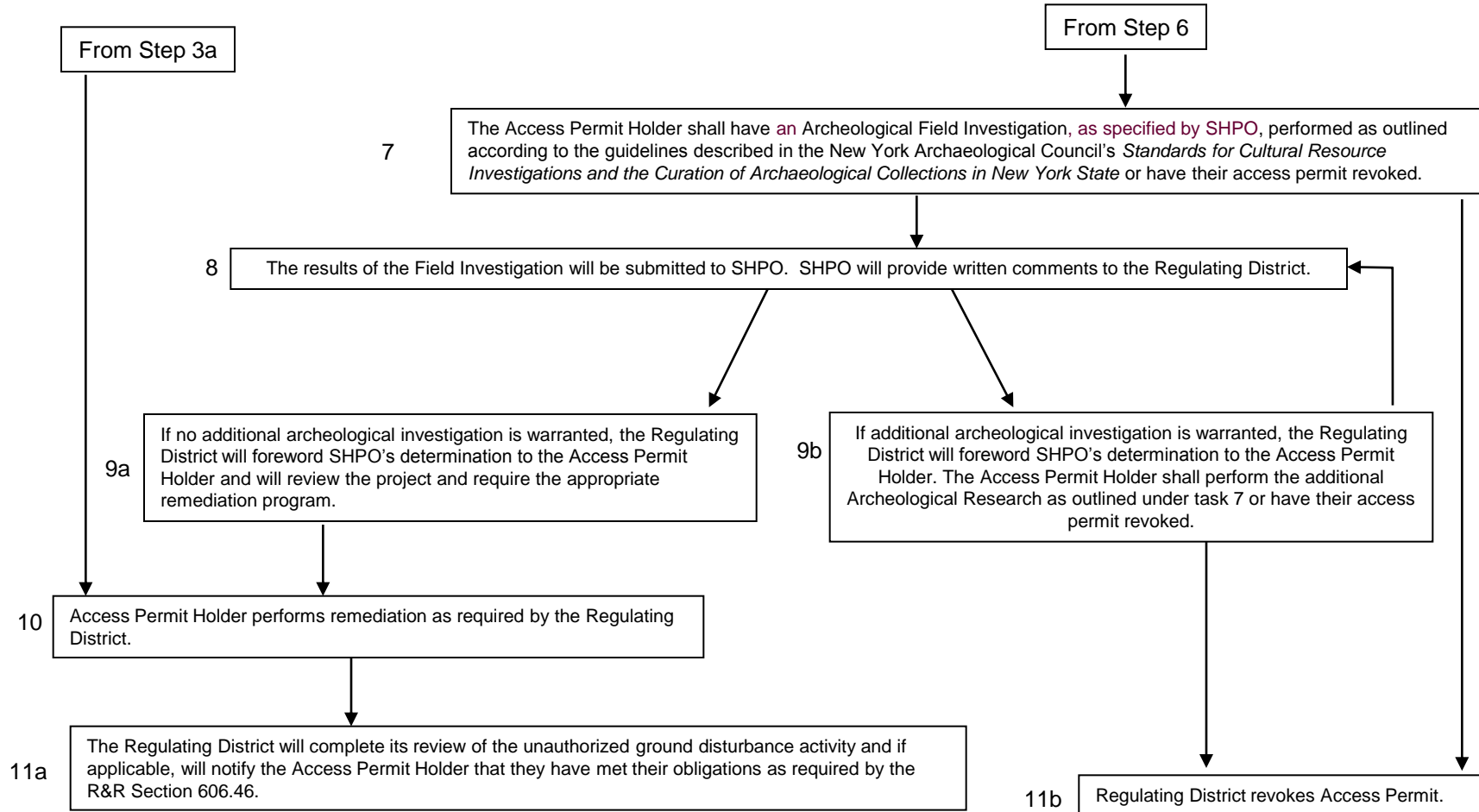
Historic Properties Management Plan for the Great Sacandaga Lake

Chart 2 Procedures for Review of Proposed Ground Disturbance on State Land Administered Under the HPMP. (Continued)



The procedures are as follows:





APPENDIX A: National Historic Preservation Act of 1966

National Historic Preservation Act of 1966

as amended through 1992

Public Law 102-575

AN ACT to Establish a Program for the Preservation of Additional Historic Properties throughout the Nation, and for Other Purposes, Approved October 15, 1966 (Public Law 89-665; 80 STAT.915; 16 U.S.C. 470) as amended by Public Law 91-243, Public Law 93-54, Public Law 94-422, Public Law 94-458, Public Law 96-199, Public Law 96-244, Public Law 96-515, Public Law 98-483, Public Law 99-514, Public Law 100-127, and Public Law 102-575).

Italics indicates new text.

~~Strikeout~~ indicates text removed.

Section 1 (*16 U.S.C. 470*)

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

(b) The Congress finds and declares that-

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

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

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

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

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

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

(7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and

activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Section 2 (16 U.S.C. 470-1)

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

- (1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;
- (2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the administration of the national preservation program in partnership with States, Indian tribes, Native Hawaiians, and local governments;
- (3) administer federally owned, administered, or controlled prehistoric and historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;
- (4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;
- (5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and
- (6) assist State and local governments, Indian tribes and Native Hawaiian organizations and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

TITLE I

Section 101 (16 U.S.C. 470a)

(a) (1) (A) The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture.

(B) Properties meeting the criteria for National Historic Landmarks established pursuant to paragraph (2) shall be designated as "National Historic Landmarks" and included on the National Register, subject to the requirements of paragraph (6). All historic properties included on the National Register on the date of enactment of the National Historic Preservation Act Amendments of 1980 shall be deemed to be included on the National Register as of their initial listing for purposes of this Act. All historic properties listed in the Federal Register of February 6, 1979, as "National Historic Landmarks" or thereafter prior to the effective date of this Act are declared by Congress to be National historic Landmarks of national historic

significance as of their initial listing as such in the Federal Register for purposes of this Act and the Act of August 21, 1935 (49 Stat.666); except that in cases of National Historic Landmark districts for which no boundaries have been established, boundaries must first be published in the Federal Register and submitted to the Committee on Energy and Natural Resources of the United States Senate and to the Committee on Interior and Insular Affairs of the United States House of Representatives.

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

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

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

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

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

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

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

Section 101(a), continued

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

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

made within ninety days from the date of nomination unless the nomination is appealed under paragraph (5).

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

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

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

(A) ensuring that significant prehistoric and historic artifacts, and associated records, subject to section 110 of this Act, the Act of June 27, 1960 (16 U.S.C. 469c), and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa and

Section 101(a), continued

following) are deposited in an institution with adequate long-term curatorial capabilities;

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

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

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

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

(B) ascertain the causes of the threats; and

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

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

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

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

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

(2) (A) Periodically, but not less than every 4 years after the approval of any State program under this subsection, the Secretary, in consultation with the Council on the appropriate provisions of this Act, and in cooperation with the State Historic

Section 101(b), continued

Preservation Officer, shall evaluate the program to determine whether it is consistent with this Act.

(B) If, at any time, the Secretary determines that a major aspect of a State program is not consistent with this Act, the Secretary shall disapprove the program and suspend in whole or in part any contracts or cooperative agreements with the State and the State Historic Preservation Officer under this Act, until the program is consistent with this Act, unless the Secretary determines that the program will be made consistent with this Act within a reasonable period of time.

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

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

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

(ii) provides for independent professional peer review.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 101(b), continued

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

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

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

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

(B) three years after the date of the enactment of the National Historic Preservation Act Amendments of 1992.

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

(i) Identification and preservation of historic properties.

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

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

(iv) Maintenance of historical and archaeological data bases.

(v) Evaluation of eligibility for Federal preservation incentives.

Nothing in this paragraph shall be construed to provide that any State Historic Preservation Officer or any other person other than the Secretary shall have the authority to maintain the National Register for properties in any State.

(B) The Secretary may enter into a contract or cooperative agreement under subparagraph (A) only if-

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

(ii) the Secretary has approved the State historic preservation program pursuant to section 101(b)(1) and (2);

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

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

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

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

in each such program.

Section 101(b), continued

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

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

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

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

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

(D) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; and

(E) satisfactorily performs the responsibilities delegated to it under this Act.

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

(2) (A) Before a property within the jurisdiction of the certified local government may be considered by the State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission. The commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register. Within sixty days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and his recommendation to the state Historic Preservation Officer. Except as provided in subparagraph (B), after receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall make the nomination pursuant to section 101(a). The State may expedite such process with the concurrence of the certified local government.

(B) If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic

Preservation Officer shall take no further action, unless within thirty days of the receipt of such recommendation by the State Historic Preservation Officer an appeal is filed with the State. If such an appeal is filed, the State shall follow the procedures for making a

Section 101(c), continued

nomination pursuant to Section 101 (a). Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.

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

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

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

(B) "protection" means a local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic properties designated pursuant to subsection (c).

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

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

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

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

- (A) the tribe's chief governing authority so requests;
- (B) the tribe designates a tribal preservation official to administer the tribal historic preservation program, through appointment by the tribe's chief governing authority or as a tribal ordinance may otherwise provide;
- (C) the tribal preservation official provides the Secretary with a plan describing how the functions the tribal preservation official proposes to assume will be carried out;

Section 101(d), continued

- (D) the Secretary determines, after consultation with the tribe, the appropriate State Historic Preservation Officer, the Council (if the tribe proposes to assume the functions of the State Historic Preservation Officer with respect to review of undertakings under section 106), and other tribes, if any, whose tribal or aboriginal lands may be affected by conduct of the tribal preservation program-
 - (i) that the tribal preservation program is fully capable of carrying out the functions specified in the plan provided under subparagraph (C);
 - (ii) that the plan defines the remaining responsibilities of the Secretary and the State Historic Preservation Officer;
 - (iii) that the plan provides, with respect to properties neither owned by a member of the tribe nor held in trust by the Secretary for the benefit of the tribe, at the request of the owner thereof, the State Historic Preservation Officer, in addition to the tribal preservation official, may exercise the historic preservation responsibilities in accordance with subsections (b)(2) and (b)(3); and
 - (E) based on satisfaction of the conditions stated in subparagraphs (A), (B), (C), and (D), the Secretary approves the plan.
- (3) In consultation with interested Indian tribes, other Native American organizations and affected State Historic Preservation Officers, the Secretary shall establish and implement procedures for carrying out section 103(a) with respect to tribal programs that assume responsibilities under paragraph (2).
- (4) At the request of a tribe whose preservation program has been approved to assume functions and responsibilities pursuant to paragraph (2), the Secretary shall enter into contracts or cooperative agreements with such tribe permitting the assumption by the tribe of any part of the responsibilities referred to in subsection (b)(6) on tribal land, if-
- (A) the Secretary and the tribe agree on additional financial assistance, if any, to the tribe for the costs of carrying out such authorities;
 - (B) the Secretary finds that the tribal historic preservation program has been demonstrated to be sufficient to carry out the contract or cooperative agreement and this Act; and
 - (C) the contract or cooperative agreement specifies the continuing responsibilities of the Secretary or of the appropriate State Historic

Preservation Officers and provides for appropriate participation by-

- (i) the tribe's traditional cultural authorities;
 - (ii) representatives of other tribes whose traditional lands are under the jurisdiction of the tribe assuming responsibilities; and
 - (iii) the interested public.
- (5) The Council may enter into an agreement with an Indian tribe to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the Council to govern compliance with section 106, if the Council, after consultation with the tribe and appropriate State Historic Preservation Officers, determines that the tribal preservation regulations will afford historic properties consideration equivalent to those afforded by the Council's regulations.

Section 101(d), continued

- (6) (A) Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.
- (B) In carrying out its responsibilities under section 106, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to properties described in subparagraph (A).
- (C) In carrying out his or her responsibilities under subsection (b)(3), the State Historic Preservation Officer for the State of Hawaii shall-
- (i) consult with Native Hawaiian organizations in assessing the cultural significance of any property in determining whether to nominate such property to the National Register;
 - (ii) consult with Native Hawaiian organizations in developing the cultural component of a preservation program or plan for such property; and
 - (iii) enter into a memorandum of understanding or agreement with Native Hawaiian organizations for the assessment of the cultural significance of a property in determining whether to nominate such property to the National Register and to carry out the cultural component of such preservation program or plan.
- (e) (1) The Secretary shall administer a program of matching grants to the States for the purposes of carrying out this Act.
- (2) The Secretary shall administer a program of matching grants-in-aid to the National Trust for Historic Preservation in the United States, chartered by Act of Congress approved October 26, 1949 (63 Stat. 947), for the purposes of carrying out the responsibilities of the National Trust.
- (3) (A) In addition to the programs under paragraphs (1) and (2), the Secretary shall administer a program of direct grants for the preservation of properties included on the National Register. Funds to support such program

annually shall not exceed 10 per centum of the amount appropriated annually for the fund established under section 108. These grants may be made by the Secretary, in consultation with the appropriate State Historic Preservation Officer-

- (i) for the preservation of National Historic Landmarks which are threatened with demolition or impairment and for the preservation of historic properties of World Heritage significance;
- (ii) for demonstration projects which will provide information concerning professional methods and techniques having application to historic properties;
- (iii) for the training and development of skilled labor in trades and crafts, and in analysis and curation, relating to historic preservation; and,

Section 101(e), continued

- (iv) to assist persons or small businesses within any historic district included in the National Register to remain within the district.

(B) The Secretary may also, in consultation with the appropriate State Historic Preservation Officer, make grants or loans or both under this section to Indian tribes and to nonprofit organizations representing ethnic or minority groups for the preservation of their cultural heritage.

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

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

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

(6) (A) As a part of the program of matching grant assistance from the Historic Preservation Fund to States, the Secretary shall administer a program of direct grants to the Federated States of Micronesia, the Republic of the Marshall Islands, the Trust Territory of the Pacific Islands, and upon termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands, the Republic of Palau (referred to as the Micronesian States) in furtherance of the Compact of Free Association between the United States and the Federated States of Micronesia and the Marshall Islands, approved by the Compact of Free Association Act of 1985 (48 U.S.C. 1681 note), the

Trusteeship Agreement for the Trust Territory of the Pacific Islands, and the Compact of Free Association between the United States and Palau, approved by the Joint Resolution entitled 'Joint Resolution to approve the "Compact of Free Association" between the United States and Government of Palau, and for other purposes'

(48 U.S.C. 1681 note). The goal of the program shall be to establish historic and cultural preservation programs that meet the unique needs of each Micronesian State so that at the termination of the compacts the programs shall be firmly established. The Secretary may waive or modify the requirements of this section to conform to the cultural setting of those nations.

(B) The amounts to be made available to the Micronesian States shall be allocated by the Secretary on the basis of needs as determined by the Secretary. Matching funds may be waived or modified.

Section 101, continued

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

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

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

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

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

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

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

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

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

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

- (i) distribution of information on preservation technologies;
- (ii) provision of training and skill development in trades, crafts, and disciplines related to historic preservation in Federal training and development programs; and
- (iii) support for research, analysis, conservation, curation, interpretation, and display related to preservation.

(Section 102 16 U.S.C. 470b)

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

- (1) unless application therefore is submitted to the Secretary in accordance with regulations and procedures prescribed by him;
- (2) unless the application is in accordance with the comprehensive statewide historic preservation plan which has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to the Land and Water Conservation Fund Act of 1965 (78 Stat. 897);
- (3) for more than 60 percent of the aggregate costs of carrying out projects and programs under the administrative control of the State Historic Preservation Officer as specified in section 101(b)(3) in any one fiscal year;
- (4) unless the grantee has agreed to make such reports, in such form and containing such information as the Secretary may from time to time require;
- (5) unless the grantee has agreed to assume, after completion of the project, the total cost of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; and
- (6) until the grantee has complied with such further terms and conditions as the Secretary may deem necessary or advisable.

Except as permitted by other law, the State share of the costs referred to in paragraph (3) shall be contributed by non-Federal sources.

Notwithstanding any other provision of law, no grant made pursuant to this Act shall be treated as taxable income for purposes of the Internal Revenue Code of 1986.

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

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

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

considered to be one grant and shall be administered by the National Park Service as such.

Section 102(d), continued

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

Section 103 (16 U.S.C. 470c)

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

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

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

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

Section 104 (16 U.S.C. 470d)

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

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

Section 104(b), continued

(1) the loan is made by a private lender approved by the Secretary as financially sound and able to service the loan properly;

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

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

(c) The aggregate unpaid principal balance of loans insured under this section and outstanding at any one time may not exceed the amount which has been covered into the Historic Preservation Fund pursuant to section 108 and subsection (g) and (i) of this section, as in effect on the date of the enactment of the Act but which has not been appropriated for any purpose.

(d) Any contract of insurance executed by the Secretary under this section may be assignable, shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

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

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

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

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

- (g) (1) In any case in which a historic property is obtained pursuant to subsection (f), the Secretary shall attempt to convey such property to any governmental or nongovernmental entity under such conditions as will ensure the property's continued preservation and use; except that if, after a reasonable time, the Secretary, in consultation with the Advisory

Council on Historic Preservation, determines that there is no feasible and prudent means to convey such property and to ensure its continued preservation and use, then the Secretary may convey the property at the fair market value of its interest in such property to any entity without restriction.

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

(h) The Secretary may assess appropriate and reasonable fees in connection with insuring loans under this section. Any such fees shall be covered into the Historic Preservation Fund, in addition to the amounts covered into such fund pursuant to section 108 and subsection (g) of this section, and shall remain available in such fund until appropriated by the Congress to carry out the purposes of this Act.

(i) Notwithstanding any other provision of law, any loan insured under this section shall be treated as non-Federal funds for the purposes of satisfying any requirement of any other provision of law under which Federal funds to be used for any project or activity are conditioned upon the use of non-Federal funds by the recipient for payment of any portion of the costs of such project or activity.

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

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

Section 105 (16 U.S.C. 470e)

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

Section 106 (16 U.S.C. 470f)

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

Section 107 (16 U.S.C. 470g)

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

Section 108 (16 U.S.C. 470h-2)

To carry out the provisions of this Act, there is hereby established the Historic Preservation Fund (hereafter referred to as the "fund") in the Treasury of the United States. There shall be covered into such fund \$24,400,000 for fiscal year 1977, \$100,000,000 for fiscal year 1978, \$100,000,000 for fiscal year 1979, \$150,000,000 for fiscal year 1980, \$150,000,000 for fiscal year 1981, and \$150,000,000 for each of fiscal years 1982 through 1997, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67 Stat. 462, 469) as amended (43 U.S.C. 338) and/or under the Act of June 4, 1920 (41 Stat. 813) as amended (30 U.S.C. 191), notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this Act and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appropriated for said purposes: Provided, that appropriations made pursuant to this paragraph may be made without fiscal year limitation.

Section 109 (16 U.S.C. 470h-1)

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

(b) In expending said funds, the Secretary shall give due consideration to the following factors: the national significance of the project; its historical value to the community; the imminence of its destruction or loss; and the expressed intentions of the donor. Funds expended under this subsection

Section 109(b), continued

shall be made available without regard to the matching requirements established by section 102 of this Act, but the recipient of such funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund established by section 108 of this Act.

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

Section 110 (16 U.S.C. 470h-2)

(a) (1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(g), any preservation, as may be necessary to carry out this section.

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

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

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

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

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

Section 110(a), continued

organizations carrying out historic preservation planning activities, and with the private sector; and

(E) that the agency's procedures for compliance with section 106-

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

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

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

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

(c) The head of each Federal agency shall, unless exempted under section 214, designate a qualified official to be known as the agency's "preservation officer" who shall be

responsible for coordinating that agency's activities under this Act. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 101(h).

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

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

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

(g) Each Federal agency may include the costs of preservation activities of such agency under this Act as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible

Section 110(g), continued

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

(h) The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts not to exceed \$1,000 and provide citations for special achievements to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the president of the United States to any citizen of the United States recommended for such award by the Secretary.

(i) Nothing in this Act shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969, and nothing in this Act shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

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

(k) Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the Council,

determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.

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

Section 111 (16 U.S.C. 470h-3)

(a) Notwithstanding any other provision of law, any Federal agency after consultation with the Council, shall, to the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes, and may lease an historic property owned by the agency to any person or organization, or exchange any property owned by the agency with

Section 111(a), continued

comparable historic property, if the agency head determines that the lease or exchange will adequately insure the preservation of the historic property.

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

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

Section 112

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

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

(B) Agency personnel or contractors responsible for historic resources shall meet qualification standards established by the Office of Personnel Management in consultation with the Secretary and appropriate professional societies of the disciplines involved. The Office of Personnel Management shall revise qualification standards within 2 years after the date of enactment

of this Act for the disciplines involved, specifically archaeology, architecture, conservation, curation, history, landscape architecture, and planning. Such standards shall consider the particular skills and expertise needed for the preservation of historic resources and shall be equivalent requirements for the disciplines involved.

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

(b) Guidelines.-In order to promote the preservation of historic resources on properties eligible for listing in the National register, the Secretary shall, in consultation with the Council, promulgate

Section 112(b), continued

guidelines to ensure that Federal, State, and tribal historic preservation programs subject to this Act include plans to-

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

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

(3) encourage the protection of Native American cultural items (within the meaning of section 2 (3) and (9) of the Native American Grave Protection and Repatriation Act

(25 U.S.C. 3001 (3) and (9)) and of properties of religious or cultural importance to Indian tribes, Native Hawaiians, or other Native American groups; and

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

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

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

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

(D) prior to excavating or disposing of a Native American cultural item in which an Indian tribe or Native Hawaiian organization may have an interest under section 3(a)(2) (B) or (C) of the Native American Grave Protection and Repatriation Act

(25 U.S.C. 3002(a)(2) (B) and (C)), given notice to and consult with such Indian tribe or Native Hawaiian organization.

Section 113

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

(b) Consultation.-In conducting the study described in subsection (a) the Secretary shall consult with the Council and other Federal agencies that conduct, cause to be conducted, or permit archaeological surveys or excavations or that have responsibilities for other kinds of antiquities and with State Historic Preservation Officers, archaeological, architectural, historical, conservation, and curatorial organizations, Indian tribes, Native Hawaiian organizations, and other Native American organizations, international organizations and other interested persons.

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

Section 113, continued

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

TITLE II

Section 201 (16 U.S.C. 470i)

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

- (1) a Chairman appointed by the President selected from the general public;
- (2) the Secretary of the Interior;
- (3) the Architect of the Capitol;
- (4) the Secretary of Agriculture and the heads of four other agencies of the United States (other than the Department of the Interior), the activities of which affect historic preservation, appointed by the President;
- (5) one Governor appointed by the President;
- (6) one mayor appointed by the President;
- (7) the President of the National Conference of State Historic Preservation Officers;
- (8) the Chairman of the National Trust for Historic Preservation;
- (9) four experts in the field of historic preservation appointed by the President from the disciplines of architecture, history, archaeology, and other appropriate disciplines;
- (10) three at-large members from the general public, appointed by the President; and

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

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

(c) Each member of the Council appointed under paragraph (1), and under paragraphs (9) and (10) of subsection (a) shall serve for a term of four years from the expiration of his predecessor's term; except that the members first appointed under that paragraph shall serve for terms of one to four years, as designated by the President at the time of appointment, in such manner as to insure that the terms of not more than two of them will expire in any one year. The members appointed under paragraphs (5) and (6) shall serve for the term of their elected office but not in excess of four years. An appointed member whose term has expired shall serve until that member's successor has been appointed.

Section 201, continued

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

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

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

Section 202 (16 U.S.C. 470j)

(a) The Council shall-

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

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

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

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

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

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

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

(b) The Council shall submit annually a comprehensive report of its activities and the results of its studies to the President and the Congress and shall from time to time submit such additional and special reports as it deems advisable. Each report shall propose such legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its

Section 202(b), continued

recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out the purposes of this Act.

Section 203 (16 U.S.C. 470k)

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

Section 204 (16 U.S.C. 470l)

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

Section 205 (16 U.S.C. 470m)

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

(b) The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor. The Executive Director shall appoint such other attorneys as may

be necessary to assist the General Counsel, represent the Council in courts of law whenever appropriate, including enforcement of agreements with Federal agencies to which the Council is a party, assist the Department of Justice in handling litigation concerning the Council in courts of law, and perform such other legal duties and functions as the Executive Director and the Council may direct.

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

Section 205, continued

(d) The Executive Director shall have power to appoint and fix the compensation of such additional personnel as may be necessary to carry out its duties, without regard to the provisions of the civil service laws and the Classification Act of 1949.

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

(f) Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Department of the Interior, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed upon by the Chairman of the Council and the Secretary of the Interior; Provided, That the regulations of the Department of the Interior for the collection of indebtedness of personnel resulting from erroneous payments (5 U.S.C. 46e) shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of said Secretary for the administrative control of funds (31 U.S.C. 665 (g)) shall apply to appropriations of the Council: And provided further, That the Council shall not be required to prescribe such regulations.

(g) The members of the Council specified in paragraphs (2) through (4) of section 201(a) shall provide the Council, with or without reimbursement as may be agreed upon by the Chairman and the members, with such funds, personnel, facilities, and services under their jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that such funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. To the extent of available appropriations, the Council may obtain, by purchase, rental, donation, or otherwise, such additional property, facilities, and services as may be needed to carry out its duties and may also receive donations of moneys for such purpose, and the Executive Director is authorized, in his discretion, to accept, hold, use, expend, and administer the same for the purposes of this Act.

Section 206 (*16 U.S.C. 470n*)

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

(b) The Council shall recommend to the Secretary of State, after consultation with the Smithsonian Institution and other public and private organizations concerned with the

technical problems of preservation, the members of the official delegation which will participate in the activities of the Centre on behalf of the United States. The Secretary of State shall appoint the members of the official delegation from the persons recommended to him by the Council.

Section 206, continued

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

Section 207 (16 U.S.C. 470o)

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

Section 208 (16 U.S.C. 470p)

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

Section 209 (16 U.S.C. 470q)

The Council is exempt from the provisions of the Federal Advisory Committee Act (86 Stat. 770), and the provisions of the Administrative Procedure Act (80 Stat. 381) shall govern the operations of the Council.

Section 210 (16 U.S.C. 470r)

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

Section 211 (16 U.S.C. 470s)

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

Section 212 (16 U.S.C. 470t)

(a) The Council shall submit its budget annually as a related agency of the Department of the Interior. To carry out the provisions of this title, there is authorized to be appropriated not more than \$2,500,000 for each of the fiscal years 1985 through 1989. There are authorized to be appropriated for purposes of this title not to exceed \$5,000,000 for each of the fiscal years 1993 through 1996.

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

Section 213 (16 U.S.C. 470u)

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

Section 214 (16 U.S.C. 470v)

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

TITLE III

Section 301 (16 U.S.C. 470w)

As used in this Act, the term-

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

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

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

(4) "Indian tribe" or "tribe" means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act

(43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as

Indians.

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

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

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

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

(B) those carried out with Federal financial assistance;

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

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

Section 301, continued

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

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

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

(A) historic properties,

(B) buildings having similar or related architectural characteristics,

(C) cultural cohesiveness, or

(D) any combination of the foregoing.

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

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

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

(B) a majority of the members of which are professionals qualified in the following and related disciplines: history, prehistoric and historic archaeology, architectural history, architecture, folklore, cultural

anthropology, curation, conservation, and landscape architecture; and

(C) which has the authority to-

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

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

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

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

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

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

Section 301, continued

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

(14) "Tribal lands" means-

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

(B) all dependent Indian communities.

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

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

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

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

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

(B) has as a primary and stated purpose the provision of services to Native Hawaiians; and

(C) has demonstrated expertise in aspects of historic preservation that are

culturally significant to Native Hawaiians.

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

Section 302 (16 U.S.C. 470w-1)

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

Section 303 (16 U.S.C. 470w-2)

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

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

Section 304 (16 U.S.C. 4702-3)

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

(1) cause a significant invasion of privacy;

(2) risk harm to the historic resource; or

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

(b) Access Determination.-When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to subsection (a), the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this Act.

(c) Consultation with Council.-When the information in question has been developed in the course of an agency's compliance with section 106 or 110(f), the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b).

Section 305 (16 U.S.C. 470w-4)

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

Section 306 (16 U.S.C. 470w-5)

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

Section 306(a), continued

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

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

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

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

(5) encourage contributions to the building arts.

(b) The cooperative agreement referred to in subsection (a) shall include provisions which-

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

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

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

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

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

(1) be commenced immediately,

(2) preserve, enhance, and restore the distinctive and historically authentic

architectural character of the site consistent with the needs of a national museum of the building arts and other compatible use, and

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

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

(f) For purposes of this section, the term "building arts" includes, but shall not be limited to, all practical and scholarly aspects of prehistoric, historic, and contemporary architecture, archaeology, construction, building technology and skills, landscape architecture, preservation and conservation,

Section 306(f), continued

building and construction, engineering, urban and community design and renewal, city and regional planning, and related professions, skills, trades and crafts.

Section 307 (16 U.S.C. 470w-6)

(a) At least thirty days prior to publishing in the Federal Register any proposed regulation required by this Act, the Secretary shall transmit a copy of the regulation to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The Secretary also shall transmit to such committees a copy of any final regulation prior to its publication in the Federal Register. Except as provided in subsection (b) of this section, no final regulation of the Secretary shall become effective prior to the expiration of thirty calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

(b) In the case of an emergency, a final regulation of the Secretary may become effective without regard to the last sentence of subsection (a) if the Secretary notified in writing the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate setting forth the reasons why it is necessary to make the regulation effective prior to the expiration of the thirty-day period.

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

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

(e) For the purposes of this section-

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

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

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

TITLE IV

Section 401

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

Section 402

For the purposes of this title-

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

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

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

Section 403

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

(b) Purposes.-The purposes of the Center shall be to-

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

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

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

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

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

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

Section 403, continued

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

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

Section 404

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

(b) Duties.-The Board shall-

- (1) provide leadership, policy advice, and professional oversight to the Center;
- (2) advise the Secretary on priorities and the allocation of grants among the activities of the Center; and
- (3) submit an annual report to the President and the Congress.

(c) Membership.-The Board shall be comprised of-

- (1) The Secretary, or the Secretary's designee;
- (2) 6 members appointed by the Secretary who shall represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations, and
- (3) 6 members appointed by the Secretary on the basis of outstanding professional qualifications who represent major organizations in the fields of archeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

Section 405

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

(b) Grant Requirements.-

- (1) Grants provided under this section shall be allocated in such a fashion to

reflect the diversity of the historic preservation fields and shall be geographically distributed.

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

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

Section 405, continued

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

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

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

Section 406

(a) Acceptance of Grants and Transfers.-The Center may accept-

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

(2) transfers of funds from other Federal agencies.

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

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

Section 407

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

APPENDIX I

National Historic Preservation Act Amendments of 1980, Public Law 96-515, December 12, 1980, 94 Stat. 3000

This appendix contains related legislative provisions enacted in the National Historic

Preservation Act Amendments of 1980 but that are not part of the National Historic Preservation Act.

Section 208 (16 U.S.C. 469c-2)

Notwithstanding section 7(a) of the Act of June 27, 1960 (16 U.S.C. 469c), or any other provision of law to the contrary-

(1) identification, surveys, and evaluation carried out with respect to historic properties within project areas may be treated for purposes of any law or rule of law as planning costs of the project and not as costs of mitigation;

(2) reasonable costs for identification, surveys, evaluation, and data recovery carried out with respect to historic properties within project areas may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit; and

(3) Federal agencies, with the concurrence of the Secretary and after notification of the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate, are authorized to waive, in appropriate cases, the 1 per centum limitation contained in Section 7(a) of such Act.

Section 401 (16 U.S.C. 470a-1)

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

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

Appendix I, Section 401, continued

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

Section 402 (16 U.S.C. 470a-2)

Prior to the approval of any Federal undertaking outside the United States which may directly and adversely affect a property which is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over such undertaking shall take into account the effect

of the undertaking on such property for purposes of avoiding or mitigating any adverse effects.

Section 502 *(16 U.S.C. 470a note)*

The Secretary, in cooperation with the American Folklife Center of the Library of Congress shall, within two years after the date of the enactment of this act, submit a report to the President and the Congress on preserving and conserving the intangible elements of our cultural heritage such as arts, skills, folklife, and folkways. The report shall take into account the view of other public and private organizations, as appropriate. This report shall include recommendations for legislative and administrative actions by the Federal Government in order to preserve, conserve, and encourage the continuation of the diverse traditional prehistoric, historic, ethnic, and folk cultural traditions that underlie and are a living expression of our American heritage.

Section 503 *(16 U.S.C. 470j note)*

The Advisory Council on Historic Preservation, in cooperation with the Secretary and the Secretary of the Treasury, shall submit a report to the President and the Congress on Federal tax laws relating to historic preservation or affecting in any manner historic preservation. Such report shall include recommendations respecting amendments to such laws which would further the purposes of this Act. Such report shall be submitted within one year after the date of enactment of this Act.

Section 504 *(16 U.S.C. 470h note)*

The Secretary shall submit a report directly to the President and the Congress on or before June 1, 1986, reviewing the operation of the Historic Preservation Fund and the national historic preservation program since the enactment of this Act and recommending appropriate funding levels, the time period for the reauthorization for appropriations from the fund, and other appropriate legislative action to be undertaken upon the expiration of the current fund authorization.

Section 505 *(40 U.S.C. 874 note)*

The Pennsylvania Avenue Development Corporation shall review the development plan for those parts of the development area which are not under development or committed for development as of

Appendix I, Section 505, continued

the date of the enactment of this Act, to identify means by which the historic values of such parts of the development area may be preserved and enhanced to the maximum extent feasible. The foregoing review shall not be limited by the applicable provisions of the development plan in effect at the time of the review; nor shall the review require any actions by the Corporation during the course of the review or during its consideration by the Congress. Within one year of the date of this act the Corporation shall submit to the appropriate committees of Congress a report containing the findings of the review required under this section, together with the Corporation's recommendations for any legislative measures or funding necessary to carry out the purposes of this section. The report shall also include a description of those activities which the Corporation proposes to undertake to carry out the purposes of this section and the financial implications of carrying out those activities.

Section 506 *(16 U.S.C. 470a note)*

The Secretary shall undertake a comprehensive study and formulate recommendations for a coordinated system of cultural parks and historic conservation districts that provide for the preservation, interpretation, development, and use by public and private entities of the prehistoric, historic, architectural, cultural, and recreational resources found in definable urban areas throughout the Nation. The study shall propose alternatives concerning the management and funding of such system by public and private entities and by various levels of government. The Secretary shall submit a report of his study and recommendations to the President and the Congress within two years after the enactment of this Act.

Section 507 (16 U.S.C. 470a note)

The Secretary, in cooperation with the Secretary of the Treasury, the Administrator of the United States Fire Administration, and the Administrator of the Federal Insurance Administration, shall submit a report to the President and the Congress on fire in historic properties. Such report shall include a review of Federal laws to determine any relationship between these laws and arson or fire by "suspicious origin", and to make recommendations respecting amendments to such laws should a correlation be found to exist. Such report shall include the feasibility and necessity of establishing or developing protective measures at the Federal, State, or local level for the prevention, detection, and control of arson or fire by "suspicious origin" in historic properties. Such report shall also include recommendations regarding the Federal role in assisting the States and local governments with protecting historic properties from damage by fire. Such report shall be submitted within eighteen months after the date of enactment of this Act.

APPENDIX II

SEC. 4021. RECOMMENDATIONS.

The Secretary of the Interior, in consultation with the Advisory Council, shall seek to ensure that historic properties preserved under the National Historic Preservation Act fully reflect the historical experience of this nation.

SEC. 4023. REQUIREMENT FOR SPECIFIC AUTHORIZATION FOR PROJECTS UNDER THE HISTORIC SITES, BUILDINGS, AND ANTIQUITIES ACT.

Section 6 of the Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes" (16 U.S.C. 461-467) is amended to read as follows:

SEC. 6. REQUIREMENT FOR SPECIFIC AUTHORIZATION FOR PROJECTS UNDER THE HISTORIC SITES, BUILDINGS, AND ANTIQUITIES ACT.

(a) In General-Except as provided in subsection (b), notwithstanding any other provision of law, no funds appropriated or otherwise made available to the Secretary of the Interior to carry out section 2(e) or 2(f) may be obligated or expended after the date of enactment of this section-

(1) unless the appropriation of such funds has been specifically authorized by law enacted on or after the date of enactment of this section; or

(2) in excess of the amount prescribed by law enacted on or after such date.

(b) Savings Provision.-Nothing in this section shall prohibit or limit the expenditure or obligation of any funds appropriated prior to January 1, 1993.

(c) Authorization of Appropriations.-Except as provided by subsection (a), there is authorized to be appropriated for carrying out the purposes of this Act such sums as the Congress may from time to time determine.

SEC. 4024. MARTIN LUTHER KING, JUNIOR, NATIONAL HISTORIC SITE AND PRESERVATION DISTRICT.

(a) Boundary Modification.-Subsection (a) of the first section of the Act entitled "An Act to establish the Martin Luther King, Junior, National Historic Site in the State of Georgia, and for other purposes" (Public Law 96-428; 94 Stat. 1839), establishing the Martin

Appendix II, SEC. 4024(a), continued

Luther King, Junior, National Historic Site and Preservation District, is amended by striking "numbered NASM/SERO/20, 109-C, and dated May 1980" and inserting in lieu thereof "number 489/80,013B, and dated September 1992".

(b) Limitation on Appropriations.-Section 6 of Public Law 96-428 (94 Stat. 1842) is amended by striking ", but not to exceed \$1,000,000 for development, \$100,000 for local planning, and \$3,500,000 for the acquisition of lands and interests therein".

SEC. 4025. SECRETARIAL REPORT.

(a) Report.-Not later than one year after the date of enactment of this Act, the Secretary of the Interior shall prepare and submit to the Congress a report on the manner in which properties are listed or determined to be eligible for listing on the National Register, including but not limited to, the appropriateness of the criteria used in determining such eligibility, and the effect, if any, of such listing or finding of eligibility.

(b) Preparation.-In preparing the report, the Secretary shall consult with, and consider the views and comments of other Federal agencies, as well as interested individuals and public and private organizations, and shall include representative comments received as an appendix to the report.

APPENDIX B: 36 CFR PART 800

36 CFR PART 800—PROTECTION OF HISTORIC PROPERTIES

Subpart A—Purposes and Participants

Sec.

800.1 Purposes.

800.2 Participants in the Section 106 process.

Subpart B—The Section 106 Process

800.3 Initiation of the Section 106 process.

800.4 Identification of historic properties.

800.5 Assessment of adverse effects.

800.6 Resolution of adverse effects.

800.7 Failure to resolve adverse effects.

800.8 Coordination with the National Environmental Policy Act.

800.9 Council review of Section 106 compliance.

800.10 Special requirements for protecting National Historic Landmarks.

800.11 Documentation standards.

800.12 Emergency situations.

800.13 Post-review discoveries.

Subpart C—Program Alternatives

800.14 Federal agency program alternatives.

800.15 Tribal, State, and local program alternatives. [Reserved]

800.16 Definitions.

Appendix A to Part 800—Criteria for Council involvement in reviewing individual Section 106 cases

Authority: 16 U.S.C. 470s.

Subpart A—Purposes and Participants

Sect. 800.1 Purposes.

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

effects on historic properties.

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

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

Sec. 800.2 Participants in the Section 106 process.

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

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

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

(3) Use of contractors. Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required

findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.

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

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

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

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

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

(1) State historic preservation officer.

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

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

(2) Indian tribes and Native Hawaiian organizations.

(i) Consultation on tribal lands.

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

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

(ii) Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations. Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

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

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

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

organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

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

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

(F) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act may notify the agency official in writing that it is waiving its rights under Sec. 800.6(c)(1) to execute a memorandum of agreement.

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

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

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

(d) *The public.*

(1) *Nature of involvement.* The views of the public are essential to informed Federal decisionmaking in the section 106 process. The agency official shall seek and consider the views

of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

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

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

Subpart B—The Section 106 Process

Sec. 800.3 Initiation of the section 106 process.

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

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

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

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

(c) *Identify the appropriate SHPO and/or THPO.* As part of its initial planning, the agency official shall determine the appropriate SHPO or SHPOs to be involved in the section 106

process. The agency official shall also determine whether the undertaking may occur on or affect historic properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The agency official shall then initiate consultation with the appropriate officer or officers.

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

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

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

(4) Failure of the SHPO/THPO to respond. If the SHPO/THPO fails to respond within 30 days of receipt of a request for review of a finding or determination, the agency official may either proceed to the next step in the process based on the finding or determination or consult with the Council in lieu of the SHPO/THPO. If the SHPO/THPO re-enters the Section 106 process, the agency official shall continue the consultation without being required to reconsider previous findings or determinations.

(d) Consultation on tribal lands. Where the Indian tribe has not assumed the responsibilities of the SHPO on tribal lands, consultation with the Indian tribe regarding undertakings occurring on such tribe's lands or effects on such tribal lands shall be in addition to and on the same basis as consultation with the SHPO. If the SHPO has withdrawn from the process, the agency official may complete the section 106 process with the Indian tribe and the Council, as appropriate. An Indian tribe may enter into an agreement with a SHPO or SHPOs specifying the SHPO's participation in the section 106 process for undertakings occurring on or affecting historic properties on tribal lands.

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

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

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

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

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

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

Sec. 800.4 Identification of historic properties.

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

(1) Determine and document the area of potential effects, as defined in Sec. 800.16(d);

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

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

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

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

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

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

(c) Evaluate historic significance.

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

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

cultural significance to a property off tribal lands does not agree, it may ask the Council to request the agency official to obtain a determination of eligibility.

(d) Results of identification and evaluation.

(1) No historic properties affected. If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in Sec. 800.16(i), the agency official shall provide documentation of this finding, as set forth in Sec. 800.11(d), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking. If the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.

(2) Historic properties affected. If the agency official finds that there are historic properties which may be affected by the undertaking or the SHPO/THPO or the Council objects to the agency official's finding under paragraph (d)(1) of this section, the agency official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with Sec. 800.5.

Sec. 800.5 Assessment of adverse effects.

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

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

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

(i) Physical destruction of or damage to all or part of the property;

(ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines;

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

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

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

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

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

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

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

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

(1) *Agreement with finding.* Unless the Council is reviewing the finding pursuant to Sec. 800.5(c)(3), the agency official may proceed if the SHPO/THPO agrees with the finding. The agency official shall carry out the undertaking in accordance with Sec. 800.5(d)(1). Failure of the SHPO/THPO to respond within 30 days from receipt of the finding shall be considered agreement of the SHPO/THPO with the finding.

(2) *Disagreement with finding.*

(i) If the SHPO/THPO or any consulting party disagrees within the 30-day review period, it shall specify the reasons for disagreeing with the finding. The agency official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraph (c)(3) of this section.

(ii) The agency official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the agency official that it attaches religious and cultural

significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30-day review period specify the reasons for disagreeing with the finding and request the Council to review the finding pursuant to paragraph (c)(3) of this section.

(iii) If the Council on its own initiative so requests within the 30-day review period, the agency official shall submit the finding, along with the documentation specified in Sec. 800.11(e), for review pursuant to paragraph (c)(3) of this section. A Council decision to make such a request shall be guided by the criteria in appendix A to this part.

(3) Council review of findings. When a finding is submitted to the Council pursuant to paragraph (c)(2) of this section, the agency official shall include the documentation specified in Sec. 800.11(e). The Council shall review the finding and notify the agency official of its determination as to whether the adverse effect criteria have been correctly applied within 15 days of receiving the documented finding from the agency official. The Council shall specify the basis for its determination. The agency official shall proceed in accordance with the Council's determination. If the Council does not respond within 15 days of receipt of the finding, the agency official may assume concurrence with the agency official's findings and proceed accordingly.

(d) Results of assessment.

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

(2) Adverse effect. If an adverse effect is found, the agency official shall consult further to resolve the adverse effect pursuant to Sec. 800.6.

Sec. 800.6 Resolution of adverse effects.

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

(1) Notify the Council and determine Council participation. The agency official shall notify the Council of the adverse effect finding by providing the documentation specified in Sec. 800.11(e).

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

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

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

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

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

(iii) The Council shall advise the agency official and all consulting parties whether it will participate within 15 days of receipt of notice or other request. Prior to entering the process, the Council shall provide written notice to the agency official and the consulting parties that its decision to participate meets the criteria set forth in appendix A to this part. The Council shall also advise the head of the agency of its decision to enter the process. Consultation is conducted in accordance with paragraph (b)(2) of this section.

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

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

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

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

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

(b) *Resolve adverse effects.*

(1) *Resolution without the Council.*

(i) The agency official shall consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects.

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

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

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

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

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

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

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

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

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

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

(2) Invited signatories.

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

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

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

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

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

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

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

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

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

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

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

Sec. 800.7 Failure to resolve adverse effects.

(a) Termination of consultation. After consulting to resolve adverse effects pursuant to Sec. 800.6(b)(2), the agency official, the SHPO/THPO, or the Council may determine that further

consultation will not be productive and terminate consultation. Any party that terminates consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

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

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

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

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

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

(c) *Comments by the Council.*

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

(2) *Timing.* The Council shall transmit its comments within 45 days of receipt of a request under paragraph (a)(1) or (a)(3) of this section or Sec. 800.8(c)(3), or termination by the Council under Sec. 800.6(b)(1)(v) or paragraph (a)(4) of this section, unless otherwise agreed to by the agency official.

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

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

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

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

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

Sec. 800.8 Coordination With the National Environmental Policy Act.

(a) General principles.

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

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

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

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

(c) Use of the NEPA process for section 106 purposes. An agency official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in Secs. 800.3 through 800.6 if the agency official has notified in advance the SHPO/THPO and the Council that it intends to do so and the following standards are met.

(1) Standards for developing environmental documents to comply with Section 106. During

preparation of the EA or draft EIS (DEIS) the agency official shall:

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

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

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

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

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

(2) Review of environmental documents.

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

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

(3) Resolution of objections. Within 30 days of the agency official's referral of an objection under paragraph (c)(2)(ii) of this section, the Council shall notify the agency official either that it agrees with the objection, in which case the agency official shall enter into consultation in accordance with Sec. 800.6(b)(2) or seek Council comments in accordance with Sec. 800.7(a), or that it disagrees with the objection, in which case the agency official shall continue its compliance with this section. Failure of the Council to respond within the 30 day period shall be considered disagreement with the objection.

(4) Approval of the undertaking. If the agency official has found, during the preparation of an EA or EIS that the effects of an undertaking on historic properties are adverse, the agency official

shall develop measures in the EA, DEIS, or EIS to avoid, minimize, or mitigate such effects in accordance with paragraph (c)(1)(v) of this section. The agency official's responsibilities under section 106 and the procedures in this subpart shall then be satisfied when either:

(i) A binding commitment to such proposed measures is incorporated in:

(A) The ROD, if such measures were proposed in a DEIS or EIS; or

(B) An MOA drafted in compliance with Sec. 800.6(c); or

(ii) The Council has commented under Sec. 800.7 and received the agency's response to such comments.

(5) *Modification of the undertaking.* If the undertaking is modified after approval of the FONSI or the ROD in a manner that changes the undertaking or alters its effects on historic properties, or if the agency official fails to ensure that the measures to avoid, minimize or mitigate adverse effects (as specified in either the FONSI or the ROD, or in the binding commitment adopted pursuant to paragraph (c)(4) of this section) are carried out, the agency official shall notify the Council and all consulting parties that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in Secs. 800.3 through 800.6 will be followed as necessary.

Sec. 800.9 Council review of section 106 compliance.

(a) *Assessment of agency official compliance for individual undertakings.* The Council may provide to the agency official its advisory opinion regarding the substance of any finding, determination or decision or regarding the adequacy of the agency official's compliance with the procedures under this part. The Council may provide such advice at any time at the request of any individual, agency or organization or on its own initiative. The agency official shall consider the views of the Council in reaching a decision on the matter in question.

(b) *Agency foreclosure of the Council's opportunity to comment.* Where an agency official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the agency official and the agency's Federal preservation officer and allow 30 days for the agency official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the agency official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon historic properties.

(c) *Intentional adverse effects by applicants.*

(1) Agency responsibility. Section 110(k) of the act prohibits a Federal agency from granting a loan, loan guarantee, permit, license or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic

property to which the grant would relate, or having legal power to prevent it, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to section 110 of the act governs its implementation.

(2) Consultation with the Council. When an agency official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the agency official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained from the applicant, SHPO/THPO, an Indian tribe if the undertaking occurs on or affects historic properties on tribal lands, and other parties known to be interested in the undertaking.

(i) Within thirty days of receiving the agency official's notification, unless otherwise agreed to by the agency official, the Council shall provide the agency official with its opinion as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects.

(ii) The agency official shall consider the Council's opinion in making a decision on whether to grant assistance to the applicant, and shall notify the Council, the SHPO/THPO, and other parties known to be interested in the undertaking prior to granting the assistance.

(3) Compliance with Section 106. If an agency official, after consulting with the Council, determines to grant the assistance, the agency official shall comply with Secs. 800.3 through 800.6 to take into account the effects of the undertaking on any historic properties.

(d) Evaluation of Section 106 operations. The Council may evaluate the operation of the section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the act.

(1) Information from participants. Section 203 of the act authorizes the Council to obtain information from Federal agencies necessary to conduct evaluation of the section 106 process. The agency official shall make documentation of agency policies, operating procedures and actions taken to comply with section 106 available to the Council upon request. The Council may request available information and documentation from other participants in the section 106 process.

(2) Improving the operation of section 106. Based upon any evaluation of the section 106 process, the Council may make recommendations to participants, the heads of Federal agencies, and the Secretary of actions to improve the efficiency and effectiveness of the process. Where the Council determines that an agency official or a SHPO/THPO has failed to properly carry out the responsibilities assigned under the process in this part, the Council may participate in individual case reviews conducted under such process in addition to the SHPO/THPO for such period that it determines is necessary to improve performance or correct deficiencies. If the Council finds a pattern of failure by a Federal agency in carrying out its responsibilities under section 106, the Council may review the policies and programs of the agency related to historic preservation

pursuant to section 202(a)(6) of the act and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs with section 106.

Sec. 800.10 Special requirements for protecting National Historic Landmarks.

(a) Statutory requirement. Section 110(f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in Secs. 800.6 through 800.7 and give special consideration to protecting National Historic Landmarks as specified in this section.

(b) Resolution of adverse effects. The agency official shall request the Council to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under Sec. 800.6.

(c) Involvement of the Secretary. The agency official shall notify the Secretary of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the act to assist in the consultation.

(d) Report of outcome. When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any memoranda of agreement to which it is a signatory, to the Secretary and the head of the agency responsible for the undertaking.

Sec. 800.11 Documentation standards.

(a) Adequacy of documentation. The agency official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. The agency official shall provide such documentation to the extent permitted by law and within available funds. When an agency official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of historic properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the agency official and specify the information needed to meet the standard. At the request of the agency official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the agency official and the consulting parties.

(b) Format. The agency official may use documentation prepared to comply with other laws to fulfill the requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) Confidentiality.

(1) Authority to withhold information. Section 304 of the act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act.

(2) Consultation with the Council. When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of the SHPO/THPO, Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) Other authorities affecting confidentiality. Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the section 106 process and may authorize the agency official to protect the privacy of non-governmental applicants.

(d) Finding of no historic properties affected. Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;

(2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to Sec. 800.4(b); and

(3) The basis for determining that no historic properties are present or affected.

(e) Finding of no adverse effect or adverse effect. Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;

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

(3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;

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

(5) An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

(6) Copies or summaries of any views provided by consulting parties and the public.

(f) Memorandum of agreement. When a memorandum of agreement is filed with the Council, the documentation shall include, any substantive revisions or additions to the documentation provided the Council pursuant to Sec. 800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.

(g) Requests for comment without a memorandum of agreement. Documentation shall include:

(1) A description and evaluation of any alternatives or mitigation measures that the agency official proposes to resolve the undertaking's adverse effects;

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

(3) Copies or summaries of any views submitted to the agency official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(4) Any substantive revisions or additions to the documentation provided the Council pursuant to Sec. 800.6(a)(1).

Sec. 800.12 Emergency situations.

(a) Agency procedures. The agency official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of Secs. 800.3 through 800.6.

(b) Alternatives to agency procedures. In the event an agency official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to paragraph (a) of this section, the agency official may comply with section 106 by:

(1) Following a programmatic agreement developed pursuant to Sec. 800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the agency official determines that circumstances do not permit seven days for comment, the agency official shall notify the Council, the SHPO/THPO and the Indian tribe

or Native Hawaiian organization and invite any comments within the time available.

(c) Local governments responsible for section 106 compliance. When a local government official serves as the agency official for section 106 compliance, paragraphs (a) and (b) of this section also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the agency official shall comply with Secs. 800.3 through 800.6.

(d) Applicability. This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

Sec. 800.13 Post-review discoveries.

(a) Planning for subsequent discoveries.

(1) Using a programmatic agreement. An agency official may develop a programmatic agreement pursuant to Sec. 800.14(b) to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking.

(2) Using agreement documents. When the agency official's identification efforts in accordance with Sec. 800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no programmatic agreement has been developed pursuant to paragraph (a)(1) of this section, the agency official shall include in any finding of no adverse effect or memorandum of agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the agency official's responsibilities under section 106 and this part.

(b) Discoveries without prior planning. If historic properties are discovered or unanticipated effects on historic properties found after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the agency official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to Sec. 800.6; or

(2) If the agency official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archeological data, the agency official may comply with the Archeological and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification. The agency official shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) *Eligibility of properties.* The agency official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of section 106. The agency official shall specify the National Register criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) *Discoveries on tribal lands.* If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section and construction has commenced, the agency official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed action.

Subpart C—Program Alternatives

Sec. 800.14 Federal agency program alternatives.

(a) *Alternate procedures.* An agency official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the act.

(1) *Development of procedures.* The agency official shall consult with the Council, the National Conference of State Historic Preservation Officers, or individual SHPO/THPOs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternate procedures, publish notice of the availability of proposed alternate procedures in the *Federal Register* and take other appropriate steps to seek public input during the development of alternate procedures.

(2) *Council review.* The agency official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, it shall notify the agency official and the agency official may adopt them as final alternate procedures.

(3) *Notice.* The agency official shall notify the parties with which it has consulted and publish notice of final alternate procedures in the *Federal Register*.

(4) Legal effect. Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) Programmatic agreements. The Council and the agency official may negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) Use of programmatic agreements. A programmatic agreement may be used:

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

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decisionmaking responsibilities;

(iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) Developing programmatic agreements for agency programs.

(i) The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the programmatic agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the agency official shall also follow paragraph (f) of this section.

(ii) Public participation. The agency official shall arrange for public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The agency official shall consider the nature of the program and its likely effects on historic properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) Effect. The programmatic agreement shall take effect when executed by the Council, the agency official and the appropriate SHPOs/ THPOs when the programmatic agreement concerns a specific region or the president of NCSHPO when NCSHPO has participated in the consultation. A programmatic agreement shall take effect on tribal lands only when the THPO, Indian tribe, or a designated representative of the tribe is a signatory to the agreement.

Compliance with the procedures established by an approved programmatic agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until it expires or is terminated by the agency, the president of NCSHPO when a signatory, or the Council. Termination by an individual SHPO/THPO shall only terminate the application of a regional programmatic agreement within the jurisdiction of the SHPO/THPO. If a THPO assumes the responsibilities of a SHPO pursuant to section 101(d)(2) of the act and the SHPO is signatory to programmatic agreement, the THPO assumes the role of a signatory, including the right to terminate a regional programmatic agreement on lands under the jurisdiction of the tribe.

(iv) Notice. The agency official shall notify the parties with which it has consulted that a programmatic agreement has been executed under paragraph (b) of this section, provide appropriate public notice before it takes effect, and make any internal agency procedures implementing the agreement readily available to the Council, SHPO/ THPOs, and the public.

(v) If the Council determines that the terms of a programmatic agreement are not being carried out, or if such an agreement is terminated, the agency official shall comply with subpart B of this part with regard to individual undertakings of the program covered by the agreement.

(3) Developing programmatic agreements for complex or multiple undertakings. Consultation to develop a programmatic agreement for dealing with the potential adverse effects of complex projects or multiple undertakings shall follow Sec. 800.6. If consultation pertains to an activity involving multiple undertakings and the parties fail to reach agreement, then the agency official shall comply with the provisions of subpart B of this part for each individual undertaking.

(4) Prototype programmatic agreements. The Council may designate an agreement document as a prototype programmatic agreement that may be used for the same type of program or undertaking in more than one case or area. When an agency official uses such a prototype programmatic agreement, the agency official may develop and execute the agreement with the appropriate SHPO/THPO and the agreement shall become final without need for Council participation in consultation or Council signature.

(c) Exempted categories.

(1) Criteria for establishing. An agency official may propose a program or category of agency undertakings that may be exempted from review under the provisions of subpart B of this part, if the program or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as "undertakings" as defined in Sec. 800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the act.

(2) Public participation. The agency official shall arrange for public participation appropriate to the subject matter and the scope of the exemption and in accordance with the standards in subpart

A of this part. The agency official shall consider the nature of the exemption and its likely effects on historic properties and take steps to involve individuals, organizations and entities likely to be interested.

(3) Consultation with SHPOs/THPOs. The agency official shall notify and consider the views of the SHPOs/THPOs on the exemption.

(4) Consultation with Indian tribes and Native Hawaiian organizations. If the exempted program or category of undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) Council review of proposed exemptions. The Council shall review a request for an exemption that is supported by documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted. Unless it requests further information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the exemption with the purposes of the act, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic properties in accordance with section 214 of the act.

(6) Legal consequences. Any undertaking that falls within an approved exempted program or category shall require no further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) Termination. The Council may terminate an exemption at the request of the agency official or when the Council determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the agency official 30 days before termination becomes effective.

(8) Notice. The agency official shall publish notice of any approved exemption in the *Federal Register*.

(d) Standard treatments.

(1) Establishment. The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the *Federal Register*.

(2) Public participation. The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part. The Council shall consider the nature of the standard treatment and its likely effects on historic

properties and the individuals, organizations and entities likely to be interested. Where an agency official has proposed a standard treatment, the Council may request the agency official to arrange for public involvement.

(3) Consultation with SHPOs/THPOs. The Council shall notify and consider the views of SHPOs/THPOs on the proposed standard treatment.

(4) Consultation with Indian tribes and Native Hawaiian organizations. If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) Termination. The Council may terminate a standard treatment by publication of a notice in the Federal Register 30 days before the termination takes effect.

(e) Program comments. An agency official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under Secs. 800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) Agency request. The agency official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the agency official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) Public participation. The agency official shall arrange for public participation appropriate to the subject matter and the scope of the category and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) Consultation with SHPOs/THPOs. The Council shall notify and consider the views of SHPOs/THPOs on the proposed program comment.

(4) Consultation with Indian tribes and Native Hawaiian organizations. If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) Council action. Unless the Council requests additional documentation, notifies the agency official that it will decline to comment, or obtains the consent of the agency official to extend the period for providing comment, the Council shall comment to the agency official within 45 days of the request.

(i) If the Council comments, the agency official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the Federal Register of the Council's comments and steps the agency will take to ensure that effects to historic properties are taken into account.

(ii) If the Council declines to comment, the agency official shall continue to comply with the requirements of Secs. 800.3 through 800.6 for the individual undertakings.

(6) *Withdrawal of comment.* If the Council determines that the consideration of historic properties is not being carried out in a manner consistent with the program comment, the Council may withdraw the comment and the agency official shall comply with the requirements of Secs. 800.3 through 800.6 for the individual undertakings.

(f) *Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives.* Whenever an agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the agency official shall ensure that development of the program alternative includes appropriate government- to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) *Identifying affected Indian tribes and Native Hawaiian organizations.* If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the agency official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect historic properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the agency official shall identify those Indian tribes and Native Hawaiian organizations that might attach religious and cultural significance to such properties and consult with them. When a proposed program alternative has nationwide applicability, the agency official shall identify an appropriate government to government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda, and applicable provisions of law.

(2) *Results of consultation.* The agency official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The agency official and the Council shall take those views into account in reaching a final decision on the proposed program alternative.

Sec. 800.15 Tribal, State, and local program alternatives. [Reserved]

Sec. 800.16 Definitions.

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

(b) *Agency* means agency as defined in 5 U.S.C. 551.

(c) *Approval of the expenditure of funds* means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) *Area of potential effects* means the geographic area or areas within which an undertaking may

directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

(e) *Comment* means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) *Consultation* means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary's "Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act" provide further guidance on consultation.

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

(h) *Day or days* means calendar days.

(i) *Effect* means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

(j) *Foreclosure* means an action taken by an agency official that effectively precludes the Council from providing comments which the agency official can meaningfully consider prior to the approval of the undertaking.

(k) *Head of the agency* means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local, or tribal government has assumed or has been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l)(1) *Historic property* means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

(2) The term *eligible for inclusion in the National Register* includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

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

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

(o) Memorandum of agreement means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

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

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

(r) National Register criteria means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s)(1) Native Hawaiian organization means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

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

(t) Programmatic agreement means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with Sec. 800.14(b).

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

(v) State Historic Preservation Officer (SHPO) 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.

(w) Tribal Historic Preservation Officer (THPO) means the tribal official appointed by the tribe's chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

(x) Tribal lands means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) Undertaking means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; those requiring a Federal permit, license or approval; and those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

Appendix A to Part 800—Criteria for Council Involvement in Reviewing Individual Section 106 Cases

(a) Introduction. This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

(b) General policy. The Council may choose to exercise its authorities under the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

(c) Specific criteria. The Council is likely to enter the section 106 process at the steps specified in the regulations in this part when an undertaking:

(1) Has substantial impacts on important historic properties. This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of historic properties, such as impacts to multiple properties within a historic district.

(2) Presents important questions of policy or interpretation. This may include questions about how the Council's regulations are being applied or interpreted, including possible foreclosure or anticipatory demolition situations; situations where the outcome will set a precedent affecting Council policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

(3) Has the potential for presenting procedural problems. This may include cases with substantial public controversy that is related to historic preservation issues; with disputes among or about consulting parties which the Council's involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to Sec. 800.9(d)(2).

(4) Presents issues of concern to Indian tribes or Native Hawaiian organizations. This may include cases where there have been concerns raised about the identification of, evaluation of or assessment of effects on historic properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other authorities, such as the Native American Graves Protection and Repatriation Act.

Dated: December 4th, 2000.

John M. Fowler,

Executive Director.

[FR Doc. 00-31253 Filed 12-11-00; 8:45 am]

Posted January 2001

APPENDIX C: Correspondence

Michael Mosher

From: Johnson, Matthew <Matthew.Johnson@brookfieldrenewable.com>
Sent: Wednesday, June 27, 2012 9:34 AM
To: Michael Mosher
Subject: RE: Request for comments regarding Proposed Revisions to the Great Sacandaga Lake HPMP, FERC Project No. 12252-NY

Hi Mike,

I thought I responded to this, but there is nothing in my records to support that. My apologies. My comments are included below in red.

Take care.

Matt Johnson
Compliance Manager
New York East Regional Operations Center

Brookfield Renewable Energy Group
US Operations
399 Big Bay Road, Queensbury, NY 12804
T 518.743.2081 C 518.368.4663 F 518.745.4292
matt.johnson@brookfieldrenewable.com (Please make a note of change in email address)
www.brookfieldrenewable.com

Brookfield

This message, including any attachments, may contain information that is proprietary, privileged and/or confidential and is intended exclusively for the person(s) to whom it is addressed. If you are not the intended recipient or have received this message in error, please notify the sender immediately by reply email and permanently delete the original transmission from the sender, including any attachments, without making a copy.

From: Michael Mosher [<mailto:mmosher@hrbrd.com>]
Sent: Wednesday, June 27, 2012 9:23 AM
To: Johnson, Matthew
Subject: Request for comments regarding Proposed Revisions to the Great Sacandaga Lake HPMP, FERC Project No. 12252-NY

Matt,

Would you please provide comments regarding the proposed revisions to the HPMP sent to you on April 24, 2012.

A simple reply from you or your legal department acknowledging that you have reviewed the proposed revisions along with any comments or recommendations if you have them would be appreciated.

Sincerely,

Mike M

From: Michael A. Mosher
Sent: Wednesday, May 02, 2012 9:39 AM
To: Johnson, Matthew
Subject: RE: HPMP Receipt

Matt,

Thank you for your comments.

We sent you the revisions to the HPMP (text) only on April 24th, 2012.

Brookfield should have the GSL HPMP on file sent by transmittal to Tim Lukas on April 13th, 2009 which also includes revisions made to the HPMP sent to Tim Lukas on May 7th, 2008.

The package we sent you does not have the maps or correspondence.

Your comment about "Erie" is interesting. Does the HPMP incorrectly have your company named somewhere in the document? **It doesn't appear to. The Brookfield reference should be changed to Erie Boulevard, L.P.**

The revisions made to the HPMP (text) and sent to you on April 24th, 2012 includes our attempt to correctly list the current contact information for Brookfield Power, Inc. on page 14 and also removed individual's names from the HPMP contacts.

Would you please let us know what we should include for the correct contact information for Brookfield or for "Erie" and also where you are seeing the incorrect contact information within the HPMP (text)? **The contact information is for me which is here in my signature.**

Your comments and corrections will become part of the 2012 HPMP, which will have a new cover "HPMP 2012".

The entire "HPMP 2012" (in a comb binder) including all revisions, comments and historic maps will be mailed to the "Compliance Specialist, East Region" at Brookfield. **Should be Compliance Manager, NY East Region**

Please respond and include comments from your legal department. **Included.**

Thank you for your time looking at this information.

If you have any questions, please call or send e-mail.

Sincerely,

Mike M
(518) 465-3491

From: Johnson, Matthew [<mailto:Matthew.Johnson@brookfieldrenewable.com>]
Sent: Tuesday, May 01, 2012 3:10 PM
To: Michael A. Mosher
Subject: HPMP Receipt

Hi Mike,

I'm in receipt of your HPMP dated April 24, 2012. I will forward it to the legal department for a final review, but the only thing I notice is that, we are still Erie. Additionally, you reference multiple pictures throughout the HPMP, but they're not included. Thoughts?

Matt Johnson
Compliance Manager
New York East Regional Operations Center

Brookfield Renewable Energy Group

US Operations

399 Big Bay Road, Queensbury, NY 12804

T 518.743.2081 C 518.368.4663 F 518.745.4292

matt.johnson@brookfieldrenewable.com (Please make a note of change in email address)

www.brookfieldrenewable.com

Brookfield

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St. Regis Mohawk Tribe

5/18/2012

She:kon Michael,

This letter is in response to a request for comments on the Great Sacandaga Lake HPMP report. The St. Regis Mohawk Tribe has no further comments to make on the three reports and accepts them as is. Should you have any further questions in regards to this determination please contact me at your convenience.

Nia:wen,

Arnold L Printup
Tribal Historic Preservation
Saint Regis Mohawk Tribe
1(518)358-2272 Ext. 163

Michael Mosher

From: Perazio, Philip (PEB) <Philip.Perazio@parks.ny.gov>
Sent: Monday, May 14, 2012 1:56 PM
To: Michael Mosher
Cc: arnold.printup@srmt-nsn.gov; sherry.white@mohican-nsn.gov
Subject: 12PR00396 Great Sacandaga Lake HPMP 2012 Revisions

Michael –

SHPO has the following comments regarding the draft revised HPMP.

p. 13 The entry for the St. Regis Mohawk should be revised as follows:

St. Regis Mohawk Tribe (Federally Recognized)

Arnold Printup, Jr., THPO

St. Regis Mohawk Tribe

412 State Route 37

Akwesasne, NY 13655

Phone: (518) 358-2272, ext. 163

Fax: (518) 358-3203

p. 18, paragraph 2: The link to the SHPO GIS is outdated. The new link is: <http://nysparks.com/shpo/online-tools/>. Users should go there and then access the GIS. Please revise the accompanying charts as well.

p. 18, paragraph 3: "... the study could consist of shovel testing and may will require services of a cultural resource consultant ...". No such study should be conducted by a non-professional.

p. 18, last paragraph: SHPO recommends addition of the Stockbridge-Munsee.

p. 20, paragraph 3: SHPO recommends addition of the Stockbridge-Munsee. Also, SHPO requests consultation with the Nations regarding sharing information on the location of Native American burials with this office. This would enhance our ability to protect these locations from disturbance.

Chart 2, #6: Delete text in brackets.

Thank you for providing us the opportunity to comment on this document.

Philip.

Philip A. Perazio (PEB)
Historic Preservation Project Review Specialist
Archaeology Unit
New York State Office of Parks, Recreation and Historic Preservation
Peebles Island, PO Box 189, Waterford, NY 12188
Phone: (518) 237-8643 x 3276; FAX: 518-233-9049
Philip.Perazio@parks.ny.gov



Board of Hudson River-Black River Regulating District
350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-3491
FAX (518) 432-2485

April 24, 2012

Ann Bero, Tribal Historic Preservation Officer
St. Regis Mohawk Tribe
412 State Route 37
Akwesasne, NY 13655

RE: Request for review and comments regarding procedural changes to the Great Sacandaga Lake
Historic Properties Management Plan
FERC Project No. 12252-NY

Dear Ms. Bero,

As per the guidelines outlined by the *Great Sacandaga Lake Historic Properties Management Plan, Fulton, Hamilton, and Saratoga Counties, New York* (HPMP), which includes consultation with New York State Historic Preservation Office (SHPO), Native Nations and Brookfield Power, the Hudson River - Black River Regulating District (Regulating District) continues its effort for management, preservation and consultation as follows;

To date, Regulating District staff continues its effort to provide education, has had no HPMP related emergencies or accidental discoveries and continues to consult with SHPO when landowners bordering the State lands adjacent to the boundary of the Great Sacandaga Lake (GSL) propose ground disturbance activities. This consultation has resulted in over 63 potential work projects on State lands within the boundary of GSL that has required review by SHPO and processing by Regulating District staff. Through the experience obtained by working with SHPO and assisting land owners bordering GSL with potential work projects, the Regulating District would like to make revisions to the work permit process, and with this letter, asks for your input to these draft revisions. Therefore, please review the enclosed documents and provide comments as you are listed as a contact for consultation within the HPMP.

- Draft Revisions to HPMP January 19, 2012 (text)
- Draft Chart 2, (1-19-12) Flow Chart, Procedures for Review of Proposed Ground Disturbance on State Land Administered Under the HPMP
- Draft Chart 3, (1-19-12) Flow Chart, Procedures for Review of Unauthorized Ground Disturbance on State Land Administered Under the HPMP

The Draft Revisions to the HPMP (text) incorporates a change that removes the language stating "All Access Permit Holders who have performed unauthorized ground disturbance on lands of the GSL **shall** be required to have a Phase IB archeological field reconnaissance performed on the area of land affected by the unauthorized ground disturbance" and will be changed to "All Access Permit Holders who have performed unauthorized ground disturbance on lands of the GSL **may** be required to have a Phase IB archeological field reconnaissance performed on the area of land affected by the unauthorized ground disturbance".

We hope that this simple change to the HPMP (text) will streamline the review process and reduce the amount of paperwork between access permit holders, SHPO, and the Regulating District in the future

while still preserving the SHPO's ability to evaluate potentially sensitive or culturally significant sites. Please notice that we have also updated the contact information for SHPO and Native Nations on page 13, added reference to see Chart 2 on page 17, added a reference to see Chart 3 on page 19, changed the reference from the Board to the Regulating District on page 19 and added a reference to see Charts located at the end of the HPMP on the Summary page 23.

We understand that these procedural changes do not have an effect on your consultation process. However, we are informing you of the changes and appreciate your comments as part of the consultation process outlined by the HPMP.

If you have any questions or concerns regarding these proposed draft changes or would like further consultation regarding these proposed draft changes, please contact me.

Please confirm receipt of this letter and/or provide comments by June 15th, 2012 which will also become part of the Correspondence Section of the HPMP. I can be reached at the address and phone number listed above or by e-mail: mmosher@hrbrd.com.

Your effort is appreciated.

Sincerely,



Michael Mosher, P.E.
HPMP Coordinator

cc:	Cultural Resource Coordinator	Mohawk Nation
	Historic Preservation Runner	Mohawk Nation Council of Chiefs
	Sherry White, THPO	Stockbridge-Munsee Community Band of Mohicans (Federally Recognized)
	Matt Johnson	Brookfield Renewable Power, Inc.
	Philip Perazio	New York State Office of Parks, Recreation and Historic Preservation
	Michael Clark, P.E.	Executive Director
	Robert Foltan, P.E.	HPMP Administrator
	Robert Leslie, Esq.	General Counsel
	John Hodgson	Hudson River Area Administrator
	Dan Kiskis	Senior Field Assistant



Board of Hudson River-Black River Regulating District
350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-3491
FAX (518) 432-2485

April 24, 2012

Cultural Resource Coordinator
Haudenosaunee Standing Committee on Repatriation and Burial Rules and Regulations
Mohawk Nation Council of Chiefs
Akwesasne Mohawk Territory
P.O. Box 366
Roosevelt Town, NY 13683

RE: Request for review and comments regarding procedural changes to the Great Sacandaga Lake
Historic Properties Management Plan
FERC Project No. 12252-NY

Dear Cultural Resource Coordinator,

As per the guidelines outlined by the *Great Sacandaga Lake Historic Properties Management Plan, Fulton, Hamilton, and Saratoga Counties, New York* (HPMP), which includes consultation with New York State Historic Preservation Office (SHPO), Native Nations and Brookfield Power, the Hudson River - Black River Regulating District (Regulating District) continues its effort for management, preservation and consultation as follows;

To date, Regulating District staff continues its effort to provide education, has had no HPMP related emergencies or accidental discoveries and continues to consult with SHPO when landowners bordering the State lands adjacent to the boundary of the Great Sacandaga Lake (GSL) propose ground disturbance activities. This consultation has resulted in over 63 potential work projects on State lands within the boundary of GSL that has required review by SHPO and processing by Regulating District staff. Through the experience obtained by working with SHPO and assisting land owners bordering GSL with potential work projects, the Regulating District would like to make revisions to the work permit process, and with this letter, asks for your input to these draft revisions. Therefore, please review the enclosed documents and provide comments as you are listed as a contact for consultation within the HPMP.

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We hope that this simple change to the HPMP (text) will streamline the review process and reduce the amount of paperwork between access permit holders, SHPO, and the Regulating District in the future while still preserving the SHPO's ability to evaluate potentially sensitive or culturally significant sites. Please notice that we have also updated the contact information for SHPO and Native Nations on page 13, added reference to see Chart 2 on page 17, added a reference to see Chart 3 on page 19, changed the reference from the Board to the Regulating District on page 19 and added a reference to see Charts located at the end of the HPMP on the Summary page 23.

We understand that these procedural changes do not have an effect on your consultation process. However, we are informing you of the changes and appreciate your comments as part of the consultation process outlined by the HPMP.

If you have any questions or concerns regarding these proposed draft changes or would like further consultation regarding these proposed draft changes, please contact me.

Please confirm receipt of this letter and/or provide comments by June 15th, 2012 which will also become part of the Correspondence Section of the HPMP. I can be reached at the address and phone number listed above or by e-mail: mmosher@hrbrd.com.

Your effort is appreciated.

Sincerely,



Michael Mosher, P.E.
HPMP Coordinator

cc: Tribal Historic Preservation Officer
Historic Preservation Runner
Sherry White, THPO

Matt Johnson
Philip Perazio
Michael Clark, P.E.
Robert Foltan, P.E.
Robert Leslie, Esq.
John Hodgson
Dan Kiskis

St. Regis Mohawk Tribe
Mohawk Nation Council of Chiefs
Stockbridge-Munsee Community Band of Mohicans
(Federally Recognized)
Brookfield Renewable Power, Inc.
New York State Office of Parks, Recreation and Historic Preservation
Executive Director
HPMP Administrator
General Counsel
Hudson River Area Administrator
Senior Field Assistant



Board of Hudson River-Black River Regulating District
350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-3491
FAX (518) 432-2485

April 24, 2012

Historic Preservation Runner
Mohawk Nation Council of Chiefs
P.O. Box 366
Roosevelt Town, NY 13683

RE: Request for review and comments regarding procedural changes to the Great Sacandaga Lake
Historic Properties Management Plan
FERC Project No. 12252-NY

Dear Historic Preservation Runner,

As per the guidelines outlined by the *Great Sacandaga Lake Historic Properties Management Plan, Fulton, Hamilton, and Saratoga Counties, New York* (HPMP), which includes consultation with New York State Historic Preservation Office (SHPO), Native Nations and Brookfield Power, the Hudson River - Black River Regulating District (Regulating District) continues its effort for management, preservation and consultation as follows;

To date, Regulating District staff continues its effort to provide education, has had no HPMP related emergencies or accidental discoveries and continues to consult with SHPO when landowners bordering the State lands adjacent to the boundary of the Great Sacandaga Lake (GSL) propose ground disturbance activities. This consultation has resulted in over 63 potential work projects on State lands within the boundary of GSL that has required review by SHPO and processing by Regulating District staff. Through the experience obtained by working with SHPO and assisting land owners bordering GSL with potential work projects, the Regulating District would like to make revisions to the work permit process, and with this letter, asks for your input to these draft revisions. Therefore, please review the enclosed documents and provide comments as you are listed as a contact for consultation within the HPMP.

- Draft Revisions to HPMP January 19, 2012 (text)
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We hope that this simple change to the HPMP (text) will streamline the review process and reduce the amount of paperwork between access permit holders, SHPO, and the Regulating District in the future

while still preserving the SHPO's ability to evaluate potentially sensitive or culturally significant sites. Please notice that we have also updated the contact information for SHPO and Native Nations on page 13, added reference to see Chart 2 on page 17, added a reference to see Chart 3 on page 19, changed the reference from the Board to the Regulating District on page 19 and added a reference to see Charts located at the end of the HPMP on the Summary page 23.

We understand that these procedural changes do not have an effect on your consultation process. However, we are informing you of the changes and appreciate your comments as part of the consultation process outlined by the HPMP.

If you have any questions or concerns regarding these proposed draft changes or would like further consultation regarding these proposed draft changes, please contact me.

Please confirm receipt of this letter and/or provide comments by June 15th, 2012 which will also become part of the Correspondence Section of the HPMP. I can be reached at the address and phone number listed above or by e-mail: mmosher@hrbrd.com.

Your effort is appreciated.

Sincerely,



Michael Mosher, P.E.
HPMP Coordinator

cc: Tribal Historic Preservation Officer
Cultural Resource Coordinator
Sherry White, THPO

Matt Johnson
Philip Perazio
Michael Clark, P.E.
Robert Foltan, P.E.
Robert Leslie, Esq.
John Hodgson
Dan Kiskis

St. Regis Mohawk Tribe
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Hudson River Area Administrator
Senior Field Assistant



Board of Hudson River-Black River Regulating District
350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-3491
FAX (518) 432-2485

April 24, 2012

Sherry White, Tribal Historic Preservation Officer
Stockbridge – Munsee Community Band of Mohican Indians
P.O. Box 70
N8754 MoNeConNuck Road
Bowler, WI 54416

RE: Request for review and comments regarding procedural changes to the Great Sacandaga Lake
Historic Properties Management Plan
FERC Project No. 12252-NY

Dear Sherry White,

As per the guidelines outlined by the *Great Sacandaga Lake Historic Properties Management Plan, Fulton, Hamilton, and Saratoga Counties, New York (HPMP)*, which includes consultation with New York State Historic Preservation Office (SHPO), Native Nations and Brookfield Power, the Hudson River - Black River Regulating District (Regulating District) continues its effort for management, preservation and consultation as follows;

To date, Regulating District staff continues its effort to provide education, has had no HPMP related emergencies or accidental discoveries and continues to consult with SHPO when landowners bordering the State lands adjacent to the boundary of the Great Sacandaga Lake (GSL) propose ground disturbance activities. This consultation has resulted in over 63 potential work projects on State lands within the boundary of GSL that has required review by SHPO and processing by Regulating District staff. Through the experience obtained by working with SHPO and assisting land owners bordering GSL with potential work projects, the Regulating District would like to make revisions to the work permit process, and with this letter, asks for your input to these draft revisions. Therefore, please review the enclosed documents and provide comments as you are listed as a contact for consultation within the HPMP.

- Draft Revisions to HPMP January 19, 2012 (text)
- Draft Chart 2, (1-19-12) Flow Chart, Procedures for Review of Proposed Ground Disturbance on State Land Administered Under the HPMP
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We hope that this simple change to the HPMP (text) will streamline the review process and reduce the amount of paperwork between access permit holders, SHPO, and the Regulating District in the future while still preserving the SHPO's ability to evaluate potentially sensitive or culturally significant sites. Please notice that we have also updated the contact information for SHPO and Native Nations on page 13, added reference to see Chart 2 on page 17, added a reference to see Chart 3 on page 19, changed the reference from the Board to the Regulating District on page 19 and added a reference to see Charts located at the end of the HPMP on the Summary page 23.

We understand that these procedural changes do not have an effect on your consultation process. However, we are informing you of the changes and appreciate your comments as part of the consultation process outlined by the HPMP.

If you have any questions or concerns regarding these proposed draft changes or would like further consultation regarding these proposed draft changes, please contact me.

Please confirm receipt of this letter and/or provide comments by June 15th, 2012 which will also become part of the Correspondence Section of the HPMP. I can be reached at the address and phone number listed above or by e-mail: mmosher@hrbrd.com.

Your effort is appreciated.

Sincerely,



Michael Mosher, P.E.
HPMP Coordinator

cc: Tribal Historic Preservation Officer
Cultural Resource Coordinator
Historic Preservation Runner
Matt Johnson
Philip Perazio
Michael Clark, P.E.
Robert Foltan, P.E.
Robert Leslie, Esq.
John Hodgson
Dan Kiskis

St. Regis Mohawk Tribe
Mohawk Nation Council of Chiefs
Mohawk Nation Council of Chiefs
Brookfield Renewable Power, Inc.
New York State Office of Parks, Recreation and Historic Preservation
Executive Director
HPMP Administrator
General Counsel
Hudson River Area Administrator
Senior Field Assistant



Board of Hudson River-Black River Regulating District
350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-3491
FAX (518) 432-2485

April 24, 2012

Matt Johnson, Compliance Specialist, East Region
Brookfield Power, Inc.
399 Big Bay Road
Glens Falls, NY 13088

RE: Request for review and comments regarding procedural changes to the Great Sacandaga Lake
Historic Properties Management Plan
FERC Project No. 12252-NY

Dear Matt Johnson,

As per the guidelines outlined by the *Great Sacandaga Lake Historic Properties Management Plan, Fulton, Hamilton, and Saratoga Counties, New York* (HPMP), which includes consultation with New York State Historic Preservation Office (SHPO), Native Nations and Brookfield Power, the Hudson River - Black River Regulating District (Regulating District) continues its effort for management, preservation and consultation as follows;

To date, Regulating District staff continues its effort to provide education, has had no HPMP related emergencies or accidental discoveries and continues to consult with SHPO when landowners bordering the State lands adjacent to the boundary of the Great Sacandaga Lake (GSL) propose ground disturbance activities. This consultation has resulted in over 63 potential work projects on State lands within the boundary of GSL that has required review by SHPO and processing by Regulating District staff. Through the experience obtained by working with SHPO and assisting land owners bordering GSL with potential work projects, the Regulating District would like to make revisions to the work permit process, and with this letter, asks for your input to these draft revisions. Therefore, please review the enclosed documents and provide comments as you are listed as a contact for consultation within the HPMP.

- Draft Revisions to HPMP January 19, 2012 (text)
- Draft Chart 2, (1-19-12) Flow Chart, Procedures for Review of Proposed Ground Disturbance on State Land Administered Under the HPMP
- Draft Chart 3, (1-19-12) Flow Chart, Procedures for Review of Unauthorized Ground Disturbance on State Land Administered Under the HPMP

The Draft Revisions to the HPMP (text) incorporates a change that removes the language stating "All Access Permit Holders who have performed unauthorized ground disturbance on lands of the GSL **shall** be required to have a Phase IB archeological field reconnaissance performed on the area of land affected by the unauthorized ground disturbance" and will be changed to "All Access Permit Holders who have performed unauthorized ground disturbance on lands of the GSL **may** be required to have a Phase IB archeological field reconnaissance performed on the area of land affected by the unauthorized ground disturbance".

We hope that this simple change to the HPMP (text) will streamline the review process and reduce the amount of paperwork between access permit holders, SHPO, and the Regulating District in the future

while still preserving the SHPO's ability to evaluate potentially sensitive or culturally significant sites. Please notice that we have also updated the contact information for SHPO and Native Nations on page 13, added reference to see Chart 2 on page 17, added a reference to see Chart 3 on page 19, changed the reference from the Board to the Regulating District on page 19 and added a reference to see Charts located at the end of the HPMP on the Summary page 23.

We understand that these procedural changes do not have an effect on your consultation process. However, we are informing you of the changes and appreciate your comments as part of the consultation process outlined by the HPMP.

If you have any questions or concerns regarding these proposed draft changes or would like further consultation regarding these proposed draft changes, please contact me.

Please confirm receipt of this letter and/or provide comments by June 15th, 2012 which will also become part of the Correspondence Section of the HPMP. I can be reached at the address and phone number listed above or by e-mail: mmosher@hrbrd.com.

Your effort is appreciated.

Sincerely,



Michael Mosher, P.E.
HPMP Coordinator

cc:	Tribal Historic Preservation Officer	St. Regis Mohawk Tribe
	Cultural Resource Coordinator	Mohawk Nation Council of Chiefs
	Historic Preservation Runner	Mohawk Nation Council of Chiefs
	Tribal Historic Preservation Officer	Stockbridge – Munsee Community Band of Mohicans
	Philip Perazio	New York State Office of Parks, Recreation and Historic Preservation
	Michael Clark, P.E.	Executive Director
	Robert Foltan, P.E.	HPMP Administrator
	Robert Leslie, Esq.	General Counsel
	John Hodgson	Hudson River Area Administrator
	Dan Kiskis	Senior Field Assistant

HUDSON RIVER - BLACK RIVER REGULATING DISTRICT
350 NORTHERN BOULEVARD
ALBANY, NEW YORK 12204
518-465-3491 (V)
518-432-2485 (F)

TRANSMITTAL NO. _____

TO:

Philip Perazio
Historic Preservation Project Review
Specialist

FROM:

Michael Mosher, P.E.
HPMP Coordinator

COMPANY:

New York State Office of Parks, Recreation
and Historic Preservation
Peebles Island, PO box 189
Waterford, NY 12188

DATE:

4/24/2012

PHONE NUMBER:

(518) 237-8643 x3281

SENDER'S REFERENCE NUMBER:

RE:

Great Sacandaga Lake - HPMP

YOUR REFERENCE NUMBER:

FERC Project No. 12252

☒ FOR YOUR INFORMATION ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY

☐ DRAWINGS ☐ REPORT ☐ SUBMITTAL

☐ REVIEWED ☐ REVIEWED & NOTED ☐ RESUBMIT ☐ REJECTED

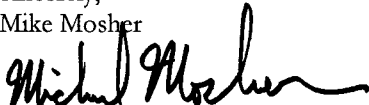
NOTES/COMMENTS:

Philip,

Please find the enclosed copy of our request for review to Indian Tribes and Brookfield Power regarding procedural changes to the Historic Property Management Plan as outlined by our meeting on 1-19-12 and your review comments dated 2-28-12.

If you have any questions or concerns, please call.

Sincerely,
Mike Mosher



cc:

S:\Engineering\Hudson River Area\FERC\Great Sacandaga Lake Project P-12252\Article 404 HPMP\Correspondence with SHPO\Transmittal SHPO Perazio 4-24-12.docx

Michael Mosher

From: Perazio, Philip (PEB) <Philip.Perazio@parks.ny.gov>
Sent: Tuesday, February 28, 2012 3:46 PM
To: Michael A. Mosher; Robert S. Foltan; John M. Hodgson; Daniel Kiskis
Subject: RE: Great Sacandaga Lake Historic Properties Management Plan - Meeting Minutes 1/19/12
Attachments: HRBRRD SHPO Meeting Minutes Draft January 19, 2012 SHPO edits.docx; Chart 1 Review of Proposed Ground Dist Draft 1-19-12 SHPO edits.pptx; Chart 2 Review of Unauthorized Ground Dist Draft 1-19-12 SHPO edits.pptx; Draft HPMP Education Letter 1-19-12 SHPO edits.doc

Dear All –

Here are my proposed edits to your draft revisions to the HPMP. Anything that is not changed or commented on is fine with us.

All the changes are minor, involving slight adjustments in wording to make them more consistent with standard language. The changes in the two charts involve consistency in reference to investigations in the event, certainly unlikely, that something beyond a Phase IB is requested. Otherwise, I've added or corrected some bits of information. Most importantly, I've added the Stockbridge Munsee to the list of Nations to be consulted since, according to the consultation map we've developed, their area of interest partly overlaps your jurisdiction.

Finally, I've added questions under the "No Disturbance" list. I assume that the planting of trees and removal of stumps would be done in small numbers (i.e. one or two) at any given time and location. However, if a more major effort is contemplated, we might want the option to consider how extensive the consequent ground disturbance may be. Please let me know if you think this is a concern.

Thanks.

Philip.

Philip A. Perazio (PEB)
Historic Preservation Project Review Specialist
Archaeology Unit
New York State Office of Parks, Recreation and Historic Preservation
Peebles Island, PO Box 189, Waterford, NY 12188
Phone: (518) 237-8643 x 3276; FAX: 518-233-9049
Philip.Perazio@parks.ny.gov

From: Michael A. Mosher [<mailto:mmosher@hrbrrd.com>]
Sent: Wednesday, February 01, 2012 2:35 PM
To: Schifferli, Michael (PEB); Perazio, Philip (PEB); Robert S. Foltan; John M. Hodgson; Daniel Kiskis
Subject: Great Sacandaga Lake Historic Properties Management Plan - Meeting Minutes 1/19/12

To All,

Thank you for your time and effort in reviewing the procedures for administering the HPMP.

I have assembled brief meeting minutes to reflect our discussions during the meeting and have enclosed a copy of ;

Meeting Minutes 1-19-12 (Draft)
HPMP Unauthorized Ground Disturbance on State Lands of the GSL (Draft)

Chart 1 Procedures for review of proposed disturbance on State Land administered under the HPMP (Draft)
Chart 2 Procedures for review of unauthorized disturbance on State Land administered under the HPMP (Draft)
Education Letter 1-19-12 (Draft)

Please make edits to the enclosed items and provide comments.

Sincerely,

Mike M

Michael Mosher, P.E.
Operations Engineer
Hudson River – Black River Regulating District
350 Northern Boulevard
Albany, NY 12204
Office (518) 465-3491
Cell (518) 265-2408

IMPORTANT: This e-mail message and any attachments contain information intended for the exclusive use of the individual(s) or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information may be subject to legal restriction or sanction. Please immediately notify the sender by electronic mail or notify the System Administrator by telephone (518)465-3491 or e-mail (rferrara@hrbrd.com) and delete the message.

Thank you.

Please note our email address is now "@parks.ny.gov".

Please update your contact lists.

New York State Office of Parks, Recreation and Historic Preservation

126 FERC ¶ 62,180
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Hudson-Black Rivers Regulating District

Project No. 12252-027

ORDER AMENDING HISTORIC PROPERTIES MANAGEMENT PLAN

(Issued March 11, 2009)

1. On October 30, 2008, Hudson-Black Rivers Regulating District, licensee for the Great Sacandaga Lake Project, FERC No. 12252, filed a request for an amendment to the Historic Properties Management Plan (HPMP) for the project.¹ The project includes the Conklingville Dam and Great Sacandaga Lake, and is located in Adirondack State Park, in Saratoga, Fulton, and Hamilton counties, New York. The project does not occupy any federal lands.
2. The licensee proposes to incorporate procedural changes into the HPMP in order to more efficiently facilitate its administration of the HPMP's provisions, streamline procedural requirements, and potentially reduce costs associated with the review of known and unknown cultural resources located on State lands within the project area. The licensee states that all the procedural changes were developed in consultation with the SHPO.
3. By letter dated August 19, 2008, a copy of which is included in the application, the SHPO states that it concurs with the proposed procedural changes to the HPMP, and further states that it believes these changes would serve to streamline the review process, conserve planning resources, and help conserve historic properties.
4. By letters from the licensee, dated May 7, 2008, draft copies of the amended HPMP were provided, for review, to the Stockbridge-Munsee Community Band of Mohicans (Stockbridge-Munsee), St. Regis Mohawk Tribe, and Akwesasne Mohawk Territory. The Stockbridge-Munsee commented that the region is not an area of archeological interest to it. No other comments were received.

¹ See Order Approving Historic Properties Management Plan, issued June 3, 2005 (111 FERC ¶ 62,251).

5. The proposed changes to the HPMP would allow greater efficiency in the administration of the plan's procedural provisions. The reasons advanced by the licensee in support of these changes are reasonable and justify the changes. The licensee's request to amend the HPMP should be approved.

The Director orders:

(A) The proposed changes to the Historic Resources Management Plan for the Great Sacandaga Lake Project, FERC No. 12252, filed October 30, 2008, are approved and made a part of the plan.

(B) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F. R. §385.713.

Robert J. Fletcher
Chief, Land Resources Branch
Division of Hydropower
Administration and Compliance

Michael A. Mosher

From: Michael.Schifferli@oprhp.state.ny.us

Sent: Wednesday, September 10, 2008 9:42 AM

To: Michael A. Mosher

Cc: Michael A. Clark; Glenn A. LaFave

Subject: [!! SPAM] June 5, 2008 GSL Historic Properties Management Plan Report

Attached:

SHPO's Phase I Report Format Requirements

Good Morning Michael (& Michael & Glen),

Yesterday, Sep. 09, 2008 the State Historic Preservation Office received a copy of the above-referenced report. I know first-hand that the work done and summarized in this volume represents a great service to your constituents and to Historic Preservation initiatives within your jurisdiction. The highly-polished product really shows the overall level of effort that was put into this endeavor by you folks. With that said it is very hard to offer critique so I'll keep my comment to one and pre-qualify it by mentioning again what a great job we think you guys did in pulling this all together and vastly improving the way consultation occurs.

Appendix D contains a copy of 1994 NYAC standards. A supplemental set of standards, meant to accompany those published in 1994 was released in 2005. I have included a copy of those standards for your information. While it is too late for this volume, any future appendix that has NYAC standards in it should include the 2005 updates as well.

Would it be possible to receive one additional bound, archival-quality copy of the final report for our library. Thanks a lot!

Most Sincerely,

Mike Schifferli

10/27/2008



Board of Hudson River-Black River Regulating District
350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-3491
FAX (518) 432-2485

September 3, 2008

Honorable Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street N.E.
Washington, D.C. 20426

**Re: Request for Review and Approval of June 5th, 2008 Great Sacandaga Lake
Historic Properties Management Plan
Great Sacandaga Lake Project (FERC Project No. 12252)**

Dear Secretary Bose:

Per the Commission's June 3, 2005 Order Approving Cultural Resource Management Plan for the Great Sacandaga Lake (HPMP), the Hudson River – Black River Regulating District (Regulating District) have been working with New York State Office of Parks, Recreation and Historic Preservation (SHPO), and consulting with the required organizations and interested persons to meet the requirements of the HPMP. These requirements have initiated education, outlined the importance of protecting cultural resources and have increased the administrative effort for the Regulating District, SHPO, organizations and interested persons for preserving cultural resources associated with the New York State lands of the Great Sacandaga Lake (GSL).

In an attempt to more efficiently facilitate the administration of the HPMP, the Regulating District has incorporated procedural changes to the HPMP that will streamline procedural requirements and potentially reduce costs associated with the review of known and unknown cultural resources located within the State land of the GSL. The procedural changes have been made with the assistance and continued consultation with SHPO and have been approved by the Regulating District Board on July 14th, 2008.

Therefore, the Regulating District hereby submits a revised HPMP dated June 5, 2008 to the Federal Energy Regulatory Commission for review and approval.

Enclosed in this submittal is (8) original copies of the June 5th, 2008 HPMP, including updated correspondence and two new flow charts. Also enclosed is the HPMP (text only) dated April 2008 which is printed in revision format to assist you with your review.

Should you or other FERC staff have any questions regarding this submittal, please contact the undersigned at (518) 465-3491.

Sincerely,



Michael Mosher, P.E. HPMP Coordinator
For Hudson River - Black Regulating District

cc: Michael Schifferli SHPO
 Curtis Lazore Mohawk Nation
 Ann Bero St. Regis Mohawk Tribe
 Timothy Lucas Brookfield Power
 Ronald Pintuff Regulating District Board Member
 Glenn LaFave Regulating District
 Robert Foltan, P.E. Regulating District
 Michael Clark, P.E. Regulating District
 File

Via: Federal Express



New York State Office of Parks, Recreation and Historic Preservation

Historic Preservation Field Services Bureau • Peebles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

www.nysparks.com

David A. Paterson
Governor

Carol Ash
Commissioner

August 19, 2008

Mr. Michael Mosher
Historic Properties Mgmt. Plan (HPMP) Coordinator
Hudson River- Black River Regulating District (HRBRD)
350 Northern Boulevard
Albany, NY 12204

RE: FERC
Proposed procedural changes to the Great Sacandaga Lake HPMP
Fulton, Hamilton, Saratoga Counties
08PR03989

Dear Mr. Mosher:

Thank you for requesting the comments of the State Historic Preservation Office (SHPO). Your project has been reviewed in accordance with Section 106 of the National Historic Preservation Act of 1966 and its implementing regulations. Based upon that review and as a result of continuous collaborated consultation between SHPO and HRBRD, we are pleased to offer the following comments.

These comments are those of the SHPO and relate only to Historic/Cultural resources. They do not include potential environmental impacts to New York State Parkland that may be involved in or near your jurisdiction. Such impacts must be considered as part of the environmental review of the project pursuant to the National Environmental Policy Act and/or the State Environmental Quality Review Act (New York Environmental Conservation Law Article 8).

In addition to your initial submission of May 7, 2008, the HPMP (dated June 5, 2005), its draft revisions, a draft flow chart that you've created for reporting and identifying historically significant sites, as well as a draft future education letter to access permit holders were also reviewed. It is our belief that the proposed improvements will serve to streamline the review process, conserve on planning resources and help to preserve historic properties within your jurisdiction. We concur that these changes are consistent with best management practices as outlined by the Secretary of the Interior.

Based upon this review, it is the SHPO's opinion that the proposed procedural changes to the HPMP will have No Adverse Effect upon cultural resources in or eligible for inclusion in the National Registers of Historic Places.

If you have any questions or comments or require additional information feel free to contact me at Extension 3281. If further correspondence is required regarding this project, please be sure to refer to the OPRHP Project Review (PR) number noted above.

Sincerely,

Michael P. Schifferli
Historic Preservation Program Analyst
Michael.Schifferli@OPRHP.state.ny.us

RECEIVED

AUG 21 2008

HUDSON RIVER-BLACK RIVER
REGULATING DISTRICT
ALBANY, NY

H2

Michael A. Mosher

From: Michael.Schifferli@oprhp.state.ny.us
Sent: Wednesday, August 06, 2008 9:20 AM
To: Michael A. Mosher; Glenn A. LaFave
Cc: Michael A. Clark; John.Bonafide@oprhp.state.ny.us
Subject: RE: GSL HPMP

Mike M & Glenn,

John Bonafide is reviewing the final draft of our comment letter and should have it back to me soon. When I receive his comments and revise the letter to reflect them I'll fax a copy over to Mike M. A hard copy on letterhead will be mailed to your Albany offices.

We prefer to have no maps present in any of these types of documents simply because the image of that map is a snapshot or static representation of the known cultural resources at that particular time. The inventory of those resources is ever expanding as new sites are added. We prefer that if specific information regarding potential archeological sensitivity is requested that individuals be directed to our existing Internet Map Server application to determine whether or not they are in an archeologically sensitive area. That site and a downloadable instruction sheet can be found at:

<http://www.nysparks.state.ny.us/shpo/resources/index.htm>

Let us know what else you need. Thanks a lot!

Mike

Michael P. Schifferli
 Historic Preservation Program Analyst
 New York State Office of Parks,
 Recreation & Historic Preservation
 PO Box 189
 Waterford, NY 12188-0189
 Tel: 518-237-8643 x.3281
 Fax: 518-233-9049



please, don't print if you don't have to.

From: Michael A. Mosher [mailto:mmosher@hrbrd.com]
Sent: Tuesday, August 05, 2008 11:25 AM
To: Schifferli, Michael (PEB); Glenn A. LaFave
Cc: Michael A. Clark
Subject: GSL HPMP

Mike S and Glenn,

I have inserted our definition of Ground Disturbance into the HPMP on page 17.

Also, the HPMP references comparing the location of Ground Disturbance to SHPO's map of sensitive areas.

Mike S,

Should we include a map from SHPO to be inserted into the HPMP?

8/26/2008

Sincerely,

Mike M

8/26/2008

**RESOLUTION TO APPROVE PROPOSED REVISIONS FOR THE GREAT SACANDAGA LAKE
HISTORIC PROPERTIES MANAGEMENT PLAN FULTON, HAMILTON, AND SARATOGA
COUNTIES, NY AND TO SUBMIT PROPOSED REVISIONS TO THE FEDERAL ENERGY
REGULATORY COMMISSION FOR REVIEW AND APPROVAL**

WHEREAS, on September 25, 2002 the Federal Energy Regulatory Commission (FERC) issued a license to the Hudson River - Black River Regulating District for the continued operation of the Conklingville Dam and the Great Sacandaga Lake reservoir facility. Section 106 of the National Historic Preservation Act of 1966 (Appendix A and 36 Congressional Federal Record (CFR) Part 800, Appendix B) obligates FERC to ensure the proper management of cultural resources that may be affected by its licensees. Accordingly, FERC requires the development of a plan that details the methods by which a licensee will properly manage cultural resources. The FERC license issued for the Great Sacandaga Lake mandates completion and implementation of a Historic Properties Management Plan (HPMP) for the management and protection of cultural resources at the Great Sacandaga Lake (GSL); and

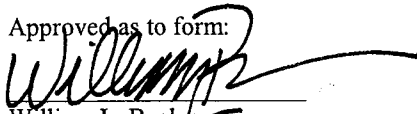
WHEREAS, in compliance with the aforementioned, in the spring of 2003, the Regulating District hired Hartgen Archeological Consultants, Inc. (Hartgen) to assemble a CRMP to meet the requirements of the GSL Project. Over the summer of 2003 and into the summer of 2004, Hartgen performed historical research on the State lands within the boundary of the GSL and assisted the Regulating District with meeting and consulting with SHPO, Indian Tribes and Brookfield Power. Through this consultation process, Hartgen assembled the *Great Sacandaga Lake Historic Properties Management Plan, Fulton, Hamilton, and Saratoga Counties, New York* (HPMP) and the Regulating District received approval from FERC on June 3, 2005.; and

WHEREAS, since the adoption of the HPMP, Regulating District Staff have been working with SHPO and consulting with the required organizations and persons to meet the requirements of the HPMP. These requirements have increased the effort in the administration of requests for work permit applications and have also required Access Permit Holders to pay for the cost of performing Phase 1B Studies; and

WHEREAS, having completed the necessary revisions pursuant to the aforementioned; and

NOW THEREFORE BE IT RESOLVED, the Board of the Hudson River-Black River Regulating District hereby approves the revisions to the HPMP.

Approved as to form:


William L. Buslet
General Counsel

Motion was made by Mrs. McDonald and seconded by Mr. Bartow that the Resolution be approved.

Present and Voting:

<u>MEMBER</u>	<u>AYE</u>	<u>NOE</u>	<u>ABSTAIN</u>
Mrs. McDonald.....	<u>X</u>	_____	_____
Ms. Beyor	<u>X</u>	_____	_____
Mr. Pintuff	<u>X</u>	_____	_____
Mr. Bartow.....	<u>X</u>	_____	_____
Mr. Dugan.....	<u>X</u>	_____	_____
Mrs. Dunning.....	<u>X</u>	_____	_____
Mr. Klein	<u>X</u>	_____	_____

Approved at the July 14, 2008 Board Meeting

Michael A. Mosher

From: Lukas, Timothy [timothy.lukas@brookfieldpower.com]
Sent: Wednesday, July 09, 2008 10:27 AM
To: Michael A. Mosher
Subject: HRBRRD - HPMP Revisions

Mike - Thanks for the recent follow-up call and message concerning whether Brookfield Renewable Power/Erie Boulevard Hydropower had any comments concerning the proposed revisions to the Regulating District's Historic Properties Management Plan (HPMP) for the Great Sacandaga Lake Project (FERC Project No. 12252-NY), as presented in your May 7, 2008 letter and enclosed documents.

Be advised that Brookfield/Erie has no comments on the proposed HPMP revisions, and greatly appreciates your diligent efforts to ensure consultation with us on this matter.

Please let me know if you need anything further.

Tim Lukas

Compliance Specialist
Brookfield Renewable Power, Inc.
Erie Boulevard Hydropower, L.P.
399 Big Bay Road
Queensbury, NY 12804
tel. 518-743-2012
cell 518-258-3024

7/9/2008

HUDSON RIVER - BLACK RIVER REGULATING DISTRICT
350 NORTHERN BOULEVARD
ALBANY, NEW YORK 12204
518-465-3491 (V)
518-432-2485 (F)

FAX TRANSMITTAL NO. _____

TO:

Ann Bero
Tribal Historic Preservation Officer

FROM:

Michael Mosher
HPMP Coordinator

ADDRESS:

412 State Route 37
Akwesasne, NY 13655

DATE:

5/28/2008

FAX NUMBER:

(518) 358-3203

SENDER'S REFERENCE NUMBER:

RE:

HPMP - Great Sacandaga Lake
Request for Consultation

YOUR REFERENCE NUMBER:

Project No. 12252

☒ FOR YOUR INFORMATION ☐ FOR REVIEW ☐ PLEASE COMMENT ☒ PLEASE REPLY

☐ DRAWINGS ☐ REPORT ☐ SUBMITTAL

☐ REVIEWED ☐ REVIEWED & NOTED ☐ RESUBMIT ☐ REJECTED

NOTES/COMMENTS:

Dear Ann Bero,

As per our May 19, 2008 transmittal to you, please let me know if you would like to consult regarding our proposed procedural changes to the Great Sacandaga Lake Historic Properties Management Plan.



Sincerely,
Michael Mosher
HPMP Coordinator

Cc: Curtis Lazore
file

Cultural Resource Coordinator, Akwesasne Mohawk Territory

cc:

S:\Engineering\Hudson River Area\Evaluations and Studies\Sacandaga\CRMP 404\Correspondence CRMP\Indian Tribes\Fax Transmittal Ann Bero Consultation 5-28-08.doc

HUDSON RIVER - BLACK RIVER REGULATING DISTRICT
350 NORTHERN BOULEVARD
ALBANY, NEW YORK 12204
518-465-3491 (V)
518-432-2485 (F)

FAX TRANSMITTAL NO. _____

TO:

Curtis Lazore
Cultural Resource Coordinator

FROM:

Michael Mosher
HPMP Coordinator

ADDRESS:

Akwesasne Mohawk Territory
Via P.O. Box 366
Roosevelt, NY 13683

DATE:

5/28/2008

FAX NUMBER:

(518) 358-3488

SENDER'S REFERENCE NUMBER:

RE:

HPMP - Great Sacandaga Lake
Request for Consultation

YOUR REFERENCE NUMBER:

Project No. 12252

☒ FOR YOUR INFORMATION ☐ FOR REVIEW ☐ PLEASE COMMENT ☒ PLEASE REPLY

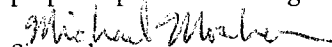
☐ DRAWINGS ☐ REPORT ☐ SUBMITTAL

☐ REVIEWED ☐ REVIEWED & NOTED ☐ RESUBMIT ☐ REJECTED

NOTES/COMMENTS:

Dear Mr. Lazore,

As per our May 7, 2008 letter to you, please let me know if you would like to consult regarding our proposed procedural changes to the Great Sacandaga Lake Historic Properties Management Plan.



Sincerely,
Mike Mosher
HPMP Coordinator

Cc: Ann Bero
file

Tribal Historic Preservation Officer, St. Regis Mohawk Tribe

cc:

S:\Engineering\Hudson River Area\Evaluations and Studies\Sacandaga\CRMP 404\Correspondence CRMP\Indian Tribes\Fax Transmittal Curtis Lazore consultation 5-28-08.doc

Stockbridge-Munsee Tribal Historic Preservation Office

Sherry White - Tribal Historic Preservation Officer
W13447 Camp 14 Road
P.O. Box 70
Bowler, WI 54416

May 22, 2008

Mike Mosher
HPMP Coordinator
350 Northern Boulevard
Albany, NY 12204

RE: Great Sacandaga Lake Historic Properties Management Plan
FERC Project No. 12252-NY

Dear Mr. Mosher:

Thank you for contacting the Stockbridge-Munsee Tribe regarding the above referenced project. The Tribe is committed to protecting archaeological sites that are important to tribal heritage, culture and religion. Furthermore, the Tribe is particularly concerned with archaeological sites that may contain human burial remains and associated funerary objects.

As described in your correspondence, the proposed ground disturbing activity of this project is not in a region of archaeological interest to the Stockbridge-Munsee Tribe.

We appreciate your cooperation in notifying the Historic Preservation Office of this project. Should you have any questions, feel free to contact me.

Sincerely,



Sherry White,
Tribal Historic Preservation Officer

RECEIVED

MAY 29 2008

HUDSON RIVER-BLACK RIVER
REGULATING DISTRICT
ALBANY, NY

HUDSON RIVER - BLACK RIVER REGULATING DISTRICT
350 NORTHERN BOULEVARD
ALBANY, NEW YORK 12204
518-465-3491 (V)
518-432-2485 (F)

TRANSMITTAL NO. _____

TO:
Ann Bero
St. Regis Mohawk Tribe

FROM:
Michael Mosher
HPMP Coordinator

ADDRESS:
St. Regis Mohawk Tribe
412 State Route 37
Akwesasne, NY 13655

DATE:
5/19/2008

PHONE NUMBER:
(518) 358-2272

SENDER'S REFERENCE NUMBER:

RE:
HPMP - Great Sacandaga Lake

YOUR REFERENCE NUMBER:
Project No. 12252

☒ FOR YOUR INFORMATION ☒ FOR REVIEW ☐ PLEASE COMMENT ☒ PLEASE REPLY

☐ DRAWINGS ☒ REPORT ☐ SUBMITTAL

☐ REVIEWED ☐ REVIEWED & NOTED ☐ RESUBMIT ☐ REJECTED

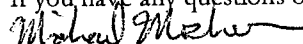
NOTES/COMMENTS:

Ann,

Please find one copy of the letter mailed to Sheree Bonaparte on May 7, 2008.

Please let me know if you would like to provide comments or be part of the consultation process regarding proposed draft procedural changes to the Great Sacandaga Lake Historic Properties Management Plan.

If you have any questions or concerns, please call.



Sincerely,

Michael Mosher, HPMP Coordinator

Cc: file



May 7, 2008

Michael P. Schifferli
New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, PO Box 189, Waterford, New York 12188-0189

RE: Request for review and comments regarding procedural changes to the Great Sacandaga Lake Historic Properties Management Plan
FERC Project No. 12252-NY

Dear Mr. Schifferli,

On September 25, 2002 the Federal Energy Regulatory Commission (FERC) issued a license to the Hudson River - Black River Regulating District (Regulating District) for the continued operation of the Conklingville Dam and Great Sacandaga Lake reservoir facility as a unit of development to be known as Great Sacandaga Lake Project (GSL Project), FERC Project No. 12252. On June 5, 2005, FERC approved the *Great Sacandaga Lake Historic Properties Management Plan, Fulton, Hamilton, and Saratoga Counties, New York* (HPMP), which was assembled by Hartgen Archeological Consultants, Inc. (Hartgen) and included consultation with New York State Historic Preservation Officer (SHPO), Native Nations and Brookfield Power.

A primary goal of the HPMP is to educate both Regulating District staff and landowners bordering the State lands adjacent to the boundary of the Great Sacandaga Lake (GSL) concerning the value and proper maintenance of archeological sites and to discourage landowners, seasonal residents and visitors from disturbing archeological sites on the State lands within the boundary of GSL. Educational information has been mailed to all landowners bordering GSL and this educational information is posted on the Regulating District's web site <http://hrbrdd.com/hpmpletter2.html>.

The HPMP also provides a protocol for dealing with emergencies and accidental finds which includes a possible call to the New York State Police and notification of SHPO, New York State Museum (NYSM) and the Mohawks if human remains are found. Please see the procedures for Managing Emergency and Accidental Archeological Discoveries listed as Chart 1 in the HPMP for further information concerning Emergency and Accidental Discoveries.

Another goal/component of the HPMP is to notify SHPO of ground disturbing activities or dam modifications that are proposed in the future and to notify the St. Regis Mohawk Tribe when precontact materials are discovered.

To date, Regulating District staff continues its effort toward providing education, has had no HPMP related emergencies or accidental discoveries and continues to coordinate its efforts with regard to consultation with SHPO when landowners bordering the State lands adjacent to the boundary of the GSL propose ground disturbance activities. This consultation has resulted in over 50 potential work projects on State lands within the boundary of GSL that has required review by SHPO and processing by Regulating District staff. Through the experience obtained by working with SHPO and assisting land owners bordering GSL with potential work projects, the Regulating District would like to make revisions to the work permit process and, with this letter, asks for your input to these draft revisions. Therefore, please review the enclosed documents and provide comments as you are listed as a contact for consultation within the HPMP.

- Draft Revisions to HPMP (text)
- HPMP June 5, 2005 (text)
- Draft Flow Chart for reporting and identifying historically significant sites

- Draft Future Education Letter to access permit holders

The Draft Revisions to the GSL HPMP (text) incorporates a change to the original HPMP (text) that removes the language stating "all/any persons proposing work involving ground disturbance will be required to perform Phase 1B archeological field reconnaissance" and encourages all persons whom propose ground disturbance on State land within the limits of the GSL to submit their request to the Regulating District via a Work Application and for the Regulating District to forward the application including description of the project and location maps to New York State Office of Parks, Recreation and Historic Preservation (SHPO) for their determination of an "effect to cultural resources". We hope that this simple change to the HPMP (text) will streamline the process and reduce the amount of paperwork between access permit holders, SHPO, and the Regulating District in the future. Please notice that we have also stated that the Phase 1A Literature Review is complete and on file at SHPO and please place close attention to the chapter, *Summary Conclusion and Annual Report* as this section has been simplified.

We have also added a section which requires that all persons who perform unauthorized ground disturbance on State lands within the boundary of the GSL shall perform a Phase 1B archeological field reconnaissance study.

The Draft Flow Chart for reporting and identifying historically significant sites was developed to provide an outline for access permit holders, SHPO, Native Nations, interested persons and the Regulating District to use as a guide to understanding the steps involved in the review of proposed ground disturbance activities on lands of GSL. Please provide specific comments to this flow chart as the changes that are outlined will need to be coordinated between all parties involved.

The Draft Future Education Letter to access permit holders has been assembled as a re-introduction to the HPMP and includes our changes to date.

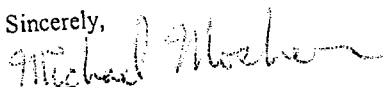
All three of these items will not become effective until the Regulating District's completes the required consultation process and our Board approves these revisions.

By June 25, 2008, please provide your review and comments on the three items listed above as the Regulating District's receipt of your comments continues to be part of the HPMP. We look forward to your review and comments as they will be considered in developing the new procedures within the HPMP. If, after your review, you have no concerns or comments, please let me know.

I will also be contacting you in the near future to coordinate a time to consult regarding these draft changes to the HPMP.

If you have any additional questions or comments, please call me at the number shown above.

Sincerely,



Michael Mosher, P.E.
HPMP Coordinator

cc: Curtis Lazore
Sherry White
Sheree Bonaparte
Tim Lukas
Glenn LaFave
William Busler, Esq.
Robert Foltan, P.E.
Michael Clark, P.E.
File

Akwesasne Mohawk Territory
Stockbridge-Munsee Community Band of Mohicans (Federally Recognized)
St. Regis Mohawk Tribe
Brookfield Power, Inc.
Executive Director
General Counsel
HPMP Administrator
Hudson River Area Administrator

Via: Mail

FEDERAL ENERGY REGULATORY COMMISSION

Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

APR 28 2008

Project No. 12252-025 – New York
Great Sacandaga Lake Project
Hudson River-Black River Regulating District

Mr. Michael Mosher, P.E.
Hudson River-Black River
Regulating District
350 Northern Boulevard
Albany, NY 12204

RECEIVED

APR 30 2008

HUDSON RIVER-BLACK RIVER
REGULATING DISTRICT
ALBANY, NY

Subject: 2007 Annual Cultural Resources Management Plan Report: Article 404

Dear Mr. Mosher:

This letter refers to your March 31, 2008 filing of the annual Historic Properties Management Plan report for the Great Sacandaga Lake Project, FERC No. 12252. You submitted the report pursuant to article 404 of the project license and the Historic Properties Management Plan (HPMP).¹

Your annual report states that during the past two years, the Regulating District has completed a Phase IA Literature Review and continues its management of Historic Properties for the New York State Lands associated with the project. As part of the management effort, there have been more than 19 Phase IB Archaeological Field Tests performed and reports written. The results of these Phase IB tests have not show discoveries of artifacts or human remains. All Phase IB Reports have been reviewed by the New York State Historic Preservation Officer (SHPO) and you enclosed the SHPO's review letters with the report.

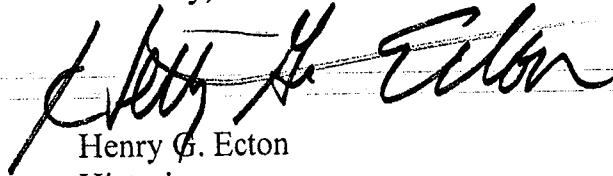
You report that other than the Phase IB work, you have continued routine operation and maintenance activities during this reporting period. In 2008, you do not anticipate any change. You also sent a copy of this report to the SHPO as required.

The filed material fulfills the annual reporting requirements of license article 404 and the HPMP for 2007. You are reminded that Article 404 of the license and the Order Approving the Historic Properties Management Plan both require filing the annual report with the Commission and the SHPO on the anniversary of the license issuance. Your

¹ The license was issued on September 25, 2002 (100 FERC ¶ 61,319). The HPMP was approved on June 3, 2005 (111 FERC ¶ 62,251).

next filing is due by September 25, 2008. Thank you for your cooperation. If you have any questions, please contact me at 202/502-8768.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry G. Ecton", written over a set of horizontal lines.


Henry G. Ecton

Historian

Division of Hydropower

Administration and Compliance

(B) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. §385.713.



John E. Estep
Division of Hydropower Administration
and Compliance

RECEIVED

JUN 13 2005

HUDSON RIVER-BLACK RIVER
REGULATING DISTRICT
ALBANY, NY

11 FEB 2005 10:00 AM

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Project No. 12252-020

Hudson-Black Rivers Regulating District

ORDER APPROVING HISTORIC PROPERTIES MANAGEMENT PLAN

(Issued June 3, 2005)

On November 8, 2004, with a supplement submitted on January 18, 2005, the Hudson-Black Rivers Regulating District (licensee) filed a Historic Properties Management Plan (HPMP), pursuant to Article 404 of the license.¹ The Great Sacandaga Lake Project, which includes Conklingville Dam and Great Sacandaga Lake, is located on the Great Sacandaga Lake in Saratoga, Fulton, and Hamilton Counties, New York.

Article 404 requires the licensee to develop an HPMP in consultation with the New York State Historic Preservation Officer (SHPO) and other appropriate entities, to mitigate the project's effects on historic properties. On July 13, 2004, the SHPO submitted comments on the draft HPMP, which were incorporated into the final HPMP. The draft was also submitted to the Saint Regis Mohawk Tribe (SRMT). On October 14, 2004, SRMT submitted comments and suggested revisions to the document, which were also incorporated into the final HPMP. On January 27, 2005, the HPMP was sent to the Advisory Council on Historic Preservation (Advisory Council) for review. The Advisory Council has not filed any comments on the plan.

Commission staff concludes that the final HPMP is consistent with the requirements of Article 404 and should be approved. Upon issuance of this order, the licensee should implement the HPMP. The licensee is reminded that on each anniversary of the issuance of the license, a report must be filed with the Commission and the SHPO of activities conducted under the implemented HPMP. The first report is due on September 25, 2006.²

The Director orders:

(A) The Historic Properties Management Plan for the Grand Sacandaga Lake Project, filed on November 8, 2004 and supplemented on January 18, 2005, is approved and made part of the license.

¹ 100 FERC ¶ 61,319 (2002).

² The licensee should implement the HPMP and file the first annual report after it has been in place for a year.



Board of Hudson River-Black River Regulating District
350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-3491
FAX (518) 432-2485

TRANSMITTAL NO. _____

TO:

Cynthia Blakemore
Historic Preservation Program Analyst

FROM:

Michael Mosher, P.E.
Operations Engineer

COMPANY:

New York State Office of Parks, Recreation
and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, PO box 189
Waterford, New York 12188-0189

DATE:

3/25/2005

PHONE NUMBER:

SENDER'S REFERENCE NUMBER:

RE:

HPMP - Great Sacandaga Lake
(SHPO # 03PR03020)

YOUR REFERENCE NUMBER:

Project No. 12252

☐ FOR YOUR INFORMATION ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY

☐ DRAWINGS ☐ REPORT ☐ SUBMITTAL

☐ REVIEWED ☐ REVIEWED & NOTED ☐ RESUBMIT ☐ REJECTED

NOTES/COMMENTS:

Cynthia,

Please find one copy of the Historic Properties Management Plan for the Great Sacandaga Lake as discussed early this morning.

Sincerely,
Mike Mosher

cc:

C:\Documents and Settings\Hudson River - Black River Regulating District\Hudson River Area\Evaluations and Studies\Sacandaga\CRMP 404\Correspondence
CRMP\Transit SHPO CRMP 3-25-05.doc



Board of Hudson River-Black River Regulating District
350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-3491
FAX (518) 432-2485

TRANSMITTAL NO. _____

TO:

The Secretary

FROM:

Michael Mosher, P.E.

COMPANY:

Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

DATE:

1/13/2005

PHONE NUMBER:

(202) 502-8838

SENDER'S REFERENCE NUMBER:

RE:

CRMP

Article 404 (Revision 1)

YOUR REFERENCE NUMBER:

Project No. 12252-NY

Great Sacandaga Lake Project

☒ FOR YOUR INFORMATION ☒ FOR REVIEW ☐ PLEASE COMMENT ☒ PLEASE REPLY

☐ DRAWINGS ☐ REPORT ☐ SUBMITTAL

☐ REVIEWED ☐ REVIEWED & NOTED ☐ RESUBMIT ☐ REJECTED

NOTES/COMMENTS:

Please find:

(9) copies of Revision 1 to the Hudson River Black River Regulating District's Historic Properties Management Plan (HPMP) for the Great Sacandaga Lake dated December 2004.

(9) copies of comments received from the St. Regis Mohawk Tribe.

Please forward a copy of this package to Jean Potvin as this submittal is for approval according to Article 404 of the District's F.E.R.C. License. Please see the following page for additional information.

Cc: file

Via Mail

MM

cc:

C:\Documents and Settings\Hudson River - Black River Regulating District\Hudson River Area\Evaluations and Studies\Sacandaga\CRMP 404\CRMP FERC
Correspondence\Tmsrd\FERC\CRMP 11-5-14.doc

January 13, 2005

Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Article 404 Compliance Submittal for:
Great Sacandaga Lake Project No. 12252
Revision 1, December 2004

As outlined in its November 3, 2004 transmittal and cover letter, the Hudson River – Black River Regulating District is pleased to provide comments made by Sheree Bonaparte of the St. Regis Mohawk Tribe.

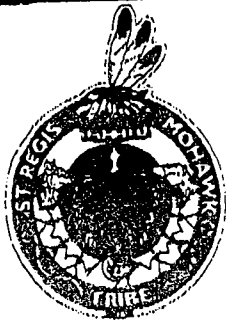
The November 5, 2004 package is currently under review by Jean Potvin of FERC and she is expecting this correspondence from the St. Regis Mohawk Tribe as part of her review.

Sheree Bonaparte's comments are incorporated into the *Historic Properties Management Plan* (HPMP) as Revision 1 dated December 2004 and have been highlighted in yellow for the reviewer's convenience.

Please discard the sections included on the first page of the Table of Contents for the October 2004 HPMP only and insert the new sections including the new Table of Contents labeled December 2004 into the HPMP package. Also, please insert Sheree Bonaparte's correspondence letter into Appendix C *Correspondence*, as an attachment to this section of the HPMP package.

If you have any questions regarding this submittal or require additional assistance, please call Mr. Michael Mosher at (518) 465-3491.

Cc: file



Saint Regis Mohawk Tribe

Chief James W. Ransom
Chief Margaret Terrance
Chief Barbara A. Lazore
Sub-Chief Andrew Jacobs
Sub-Chief Rita Swamp
Sub-Chief Emily Lauzon

October 14, 2004

Christopher Kilkenny, Hartgen Archeological
Associates, Inc.,
524 Broadway 2nd Floor,
Albany, New York.

She:kon Christopher,

I have reviewed the Great Sacandaga Lake Draft Historic Properties Management Plan (HPMP) on behalf of the St. Regis Mohawk Tribe. Please include a provision for restricting access to information pertaining to the Native American burial sites within the GSL area to approved parties.

As we discussed during our meeting at the Hudson River-Black River Regulating District's Sacandaga Field Office on July 14, 2004, I will conduct a site visit with Regulating District Staff at Great Sacandaga Lake to observe the current conditions in the vicinity of known precontact sites that are a concern to the St. Regis Mohawk Tribe. I will make recommendations regarding the Regulating District's management of these sites based on the site visit.

I respectfully request the inclusion of Mohawk Nation Council of Chiefs and the Haudenosaunee Standing Committee on Repatriation and Burials Rules and Regulations in consultations and notifications pertaining to actual and potential Native American archeological and grave sites as stated in the Native American Graves Protection and Repatriation Act, Section 2 (7). Their addresses are provided below.

Otherwise, I concur with the management strategies outlined in the draft HPMP.

A handwritten signature in cursive script that reads "Sherree Bonaparte".

Sherree Bonaparte
Tribal Historic Preservation Officer

412 State Route 37
Albany, New York 12205
Phone: 518-358-3372
Fax: 518-358-3303

Historic Preservation Runner
Mohawk Nation Council of Chiefs
via PO Box
366 Rooseveltown, NY 13683

(518 358 3326)

Haudenosaunee Standing Committee on Repatriation and Burial Rules and
Regulations
c/o Curtis Lazore
via PO BOX 366
Rooseveltown, NY 13683

(518 358 6141)

SP



Board of Hudson River-Black River Regulating District
 350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-3491
 FAX (518) 432-2485

TRANSMITTAL NO. _____

TO:

The Secretary

FROM:

Michael Mosher, P.E.

COMPANY:

Federal Energy Regulatory Commission
 888 First Street, N.E.
 Washington, D.C. 20426

DATE:

11/3/2004

25

PHONE NUMBER:

(202) 502-8838

SENDER'S REFERENCE NUMBER:

RE:

CRMP
 Article 404

YOUR REFERENCE NUMBER:

Project No. 12252-NY
 Great Sacandaga Lake Project

☐ FOR YOUR INFORMATION ☒ FOR REVIEW ☒ PLEASE COMMENT ☐ PLEASE REPLY

☐ DRAWINGS ☒ REPORT ☐ SUBMITTAL

☐ REVIEWED ☐ REVIEWED & NOTED ☐ RESUBMIT ☐ REJECTED

NOTES/COMMENTS:

Please find:

(9) color copies of the Hudson River Black River Regulating District's Historic Properties Management Plan for the Great Sacandaga Lake. This plan is submitted for approval according to Article 404 of the District's F.E.R.C. License.

Future correspondence with the St. Regis Mohawk Tribe and interested persons shall be included as an attachment if/when future correspondence is received as described on next page.

Cc: file

Via Mail

cc:

C:\Documents and Settings\Hudson River - Black River Regulating District\Hudson River Area\Evaluations and Studies\Sacandaga\CRMP 404\FERC CRMP
 404\Final FERC CRMP 11-5-04.doc

November 5, 2004

Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Article 404 Compliance Submittal for:
Great Sacandaga Lake Project No. 12252

Pursuant to Article 404 of the Order Issuing License for the Project, the Hudson River – Black River Regulating District submits its *Historic Properties Management Plan* (HPMP) for activities at the Great Sacandaga Lake, Project No. 12252.

This plan is submitted fully recognizing that final comments have not been received from the St. Regis Mohawk Tribe and that when issued said comments shall be incorporated into the Plan to the satisfaction of the St. Regis Mohawk Tribe. A more detailed discussion of the circumstances of this submittal follows.

Background

The Regulating District provided a draft copy of its HPMP to Reliant Energy, the New York State Office of Parks, Recreation and Historic Preservation, and the St. Regis Mohawk Tribe in April 2004, and requested comments on its draft HPMP be received by June 1, 2004. Written comments are included in Appendix C of the enclosed HPMP.

On July 14, 2004 the Regulating District and its Consultant met with Curtis Lazore, Cultural Resource Coordinator and Sheree Bonaparte, Tribal Historic Preservation Officer for St. Regis Mohawk Tribe, to discuss the draft HPMP and any concern regarding Native American Resources. Subsequent telephone conversations revealed that St. Regis Mohawk Tribe would require additional time to complete its review. Curtis Lazore has indicated that St. Regis Mohawk Tribe leaders are reviewing the HPMP and may prepare comments.

Submittal of Plan

The HPMP reflects comments received from Reliant Energy and the New York State Office of Parks, Recreation and Historic Preservation. The Regulating District understands that Curtis Lazore awaits comments from St. Regis Mohawk Tribe leaders and that said comments may require additional time to produce. The Regulating District desires to implement the procedures necessary to secure and protect historic properties at the Great Sacandaga Lake as soon as possible and believes that approval of the HPMP, recognizing that final comments have not been received from the St. Regis Mohawk Tribe and that when issued said comments shall be incorporated into the HPMP to the satisfaction of the St. Regis Mohawk Tribe, is the best approach to properties management.

Great Sacandaga Lake, FERC Project No. 12252
Article 404 *Cultural Resource Management Plan*

Record of Telephone Conversation

Between Curtis Lazore and Michael Mosher

Re: Submission of the Great Sacandaga Lake Historic Properties Management Plan to the Federal Energy Regulatory Commission.

Date: November 3, 2004

Time: 12:30 P.M.

Location: Albany Office of Hudson River – Black River Regulating District

Curtis Lazore
Cultural Resource Coordinator
Akwesasne Mohawk Territory
Via P.O. Box 366
Roosevelt town, NY 13683
Ph. (518) 358-6141

Michael Mosher - HRBRRD

Curtis has received the Great Sacandaga Lake Historic Properties Management Plan (HPMP). Curtis would like to visit the Great Sacandaga Lake (GSL) with approximately 5 Tribal members to inspect shoreline protection measures and visit potential archeological sites. Curtis will notify the District when they are available.

Curtis intends on providing comments to the District after visiting the GSL and after his leaders provide comments.

Curtis understands that the District recognizes that receiving comments from the Tribal Leaders will require additional time and that the District will incorporate his comments into the HPMP to his satisfaction when received.

Curtis is ok with the District submitting the HPMP to the Federal Energy Regulatory Commission providing that said comments are incorporated into the HPMP.

Michael Mosher, P.E.



Board of Hudson River-Black River Regulating District
350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-3491
FAX (518) 432-2485

October 28, 2004

Curtis Lazore
Cultural Resource Coordinator
Akwesasne Mohawk Territory
Via P.O. Box 366
Roosevelt, NY 13683

RE: Historic Properties Management Plan
Great Sacandaga Lake
FERC Project No. 12252-NY

Dear Curtis,

Thank you for taking the time to meet with us to review the development of our Historic Properties Management Plan (HPMP) for the Great Sacandaga Lake on July 14, 2004. Your comments on our draft plan as sent to you on April 22, 2004 are appreciated and were incorporated into the HPMP which is enclosed with this letter.

The Regulating District desires to implement the procedures necessary to secure and protect historic properties at the Great Sacandaga Lake as soon as possible. The Regulating District understands that you await comments from Tribe Leaders and that said comments may require additional time to produce. We recognize that final comments have not been received from the St. Regis Mohawk Tribe Leaders and that when issued said comments shall be incorporated into the HPMP to the satisfaction of the St. Regis Mohawk Tribe. The Regulating District wishes to submit the Plan at this time in an effort to expedite implementation of the procedures necessary to secure and protect historic properties at the Great Sacandaga Lake.

Therefore, we ask that you contact us by telephone if you have any additional comments or concerns that you require to be incorporated into the HPMP prior to submittal to FERC.

As discussed at the July 14, 2004 meeting, I am including a copy of our current Handbook. Also, please contact me to schedule a time to visit the Great Sacandaga Lake to observe known/potential Native American sites located on the banks of the Sacandaga Reservoir as the late fall or early spring may be the most opportune times to perform a site visit.

If I can be of further assistance, please contact me at the number shown above.

Sincerely,
Michael Mosher, P.E.

A handwritten signature in black ink, appearing to read "Michael Mosher", with a long horizontal line extending to the right.

Cc: Sheree Bonaparte,
Christopher Kilkenny

St. Regis Mohawk Tribe
Hartgen Archeological Associates, Inc.

cc: file



Board of Hudson River-Black River Regulating District
350 Northern Boulevard, Albany, New York 12204 Phone (518) 465-3491
FAX (518) 432-2485

October 28, 2004

Sheree Bonaparte
Tribal Historic Preservation Officer
St. Regis Mohawk Tribe
412 State Route 37
Akwasasne, NY 13655

RE: Historic Properties Management Plan
Great Sacandaga Lake
FERC Project No. 12252-NY

Dear Sheree,

Thank you for taking the time to meet with us to review the development of our Historic Properties Management Plan (HPMP) for the Great Sacandaga Lake on July 14, 2004. Your comments on our draft plan are appreciated and were incorporated into the HPMP which is enclosed with this letter.

The Regulating District desires to implement the procedures necessary to secure and protect historic properties at the Great Sacandaga Lake as soon as possible. The Regulating District understands that you await comments from Tribe Leaders and that said comments may require additional time to produce. We recognize that final comments have not been received from the St. Regis Mohawk Tribe Leaders and that when issued said comments shall be incorporated into the HPMP to the satisfaction of the St. Regis Mohawk Tribe. The Regulating District wishes to submit the Plan at this time in an effort to expedite implementation of the procedures necessary to secure and protect historic properties at the Great Sacandaga Lake.

Therefore, we ask that you contact us by telephone if you have any additional comments or concerns that you require to be incorporated into the HPMP prior to submittal to FERC.

As discussed at the July 14, 2004 meeting, I am including a copy of our current Handbook. Also, please contact me to schedule a time to visit the Great Sacandaga Lake to observe known/potential Native American sites located on the banks of the Sacandaga Reservoir as the late fall or early spring may be the most opportune times to perform a site visit.

If I can be of further assistance, please contact me at the number shown above.

Sincerely,
Michael Mosher, P.E.

A handwritten signature in dark ink, appearing to read "Michael Mosher".

cc: Curtis Lazore, Akwasasne Mohawk Territory
Christopher Kilkenny, Hartgen Archeological Associates, Inc.

cc: file

Great Sacandaga Lake, FERC Project No. 12252
Article 404 *Cultural Resource Management Plan*

Record of Telephone Conversation

Between Christopher Kilkenny and Michael Mosher

Re: Review of Historic Properties Management Plan by Curtis Lazore of St.
Regis Mohawk Tribe.

Date: October 14, 2004

Time: 9:00 A.M.

Location: Mayfield Office of Hudson River – Black River Regulating District

Christopher Kilkenny
Hartgen Archeological Associates, Inc.
1744 Washington Ave. Extension
Rensselaer, NY 12144
Ph. (518) 427-0382

Michael Mosher - HRBRRD

Christopher Kilkenny informed me that Curtis Lazore of the St. Regis Mohawk Tribe will require additional time to consider commenting on our Historic Properties Management Plan as his comments on the plan are to be reviewed by Tribal Council.

A follow up call to Curtis is recommended.

Michael Mosher, P.E.



Great Sacandaga Lake, FERC Project No. 12252
Article 404 *Cultural Resource Management Plan*
Project Meeting No. 1

Meeting Minutes

Date: July 14, 2004
Time: 1:00 P.M.
Location: Mayfield Office of Hudson River – Black River Regulating District

Attendees: Sheree Bonaparte - St. Regis Mohawk Tribe
Curtis Lazore - St. Regis Mohawk Tribe
Karen Hartgen - Hartgen Archeological Associates, Inc.
Christopher Kilkenny - Hartgen Archeological Associates, Inc.
Robert Foltan – HRBRRD
Michael Mosher - HRBRRD

Held meeting to review the draft Historic Properties Management Plan for the Great Sacandaga Lake Project and to discuss any concerns regarding Native American Resources.

The Hudson River – Black River Regulating District is to extend an invitation to Curtis Lazore and Sheree Bonaparte to visit the Great Sacandaga Lake for a field investigation of the shoreline.

Curtis Lazore indicated that he may contribute to the plan by correspondence later this fall.



New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

July 13, 2004

Christopher Kilkenny
Hartgen Archeological Associates, Inc.
1744 Washington Avenue Extension
Rensselaer, New York 12144

Re: FERC
Great Sacandaga Lake CRMP
Moreau, Saratoga County
03PR03020

The State Historic Preservation Office (SHPO) has reviewed the information submitted for this project. Our review has been in accordance with Section 106 of the National Historic Preservation Act and relevant implementing regulations.

The SHPO has reviewed the draft report for the Great Sacandaga Lake Historic Management Plan. Our office has discussed several items with you by phone, including the proposed Phase IA report, the potential impacts from fluctuation in seasonal water levels and of those impacts from individual adjacent landowners who use the state land. Initially we suggested that clean soil/fill be brought from off the premises rather than moving soil within the individual lots in an effort to minimize the potential for impacting archeological resources.

We now understand that the clean soil/fill cannot be introduced from an off-site location. Therefore given the number of hamlets, villages and individual homes that have become archeological sites in and around the Great Sacandaga Lake and the potential for precontact sites to be present, our office recommends Phase IB testing for projects where ground disturbing activities are proposed. Section 233 permits may be needed prior to Phase IB archeological investigation.

Since the Regulating District is meeting the requirements of the Federal Energy Regulatory Commission (FERC), we recommend replacing the term OPRHP with SHPO in the text of the CRMP.

Given the higher than average potential for sites within the boundary of the Great Sacandaga Lake, the SHPO recommends that in addition to the training provision for the HPMP Coordinator and staff, that an archeological consultant be contacted when material is identified so a determination can be made regarding any Phase IB that may be warranted.

If you have any questions, please call me at (518) 237-8643, extension 3288.

Sincerely,

Cynthia Blakemore
Historic Preservation Program Analyst

CMB:bsa

June 30, 2004

Mr. Christopher Kilkenny
Project Director
Hartgen Archeological Associates, Inc.
524 Broadway, 2nd Floor
Albany, NY 12207

Subject: **Great Sacandaga Lake Project (FERC No. 12252)**
Historic Properties Management Plan

Dear Mr. Kilkenny:

Erie Boulevard Hydropower, L.P. (Erie) has received the April 2004 draft Historic Properties Management Plan (HPMP) prepared by Hartgen Archeological Associates, Inc. (Hartgen) for the Hudson River Black River Regulating District's (District) Great Sacandaga Lake Project (FERC No. 12252).

Erie has reviewed the HPMP and offers no specific comments at this time. However, Erie respectfully notes this HPMP contains certain elements and approaches Erie would not typically adopt – and which are likely the result of the unique nature, scope and character of the GSL Project.

Erie understands this draft report has also been transmitted to the New York State Office of Parks Recreation and Historic Preservation (SHPO) and the St. Regis Mohawk Tribe (SRMT). Erie would look forward to receiving a copy of others' comments as they become available.

Thank you for this opportunity to comment, and if you have any questions, please do not hesitate to contact me at (315) 413-2792.

Sincerely,

A handwritten signature in black ink, appearing to read "D.W. Culligan".

David W. Culligan, P.E.
Licensing, Compliance & Project Properties
Erie Boulevard Hydropower, LP

xc: T. Uncher
S. Hirschey
J. Sabattis
B. Harvey (KA)
M. Mosher (HRBRD)

Hartgen Archeological Associates, Inc.

CULTURAL RESOURCE SPECIALISTS
524 Broadway 2nd Floor, Albany, New York 12207
PHONE (518) 427-0382 – FAX (518) 427-0384

April 22, 2004

Lorene Jacobs
Cultural Resource Representative
Haudenosaune
Akwasasne Mohawk Territory
Via P.O. Box 366
Roosevelt, NY 13683

Re: Draft Report
Great Sacandaga Lake
Historic Properties Management Plan
Hamilton, Fulton, and Saratoga Counties, New York

Dear Ms. Jacobs,

Hartgen Archeological Associates, Inc. is pleased to present the draft historic properties management plan (HPMP) that was prepared on behalf of the Hudson River-Black River Regulating District for Great Sacandaga Lake in Hamilton, Fulton, and Saratoga Counties, New York. The purpose of the HPMP is to ensure that the operations of the Regulating District are in accordance with Section 106 of the National Historic Preservation Act. We are submitting this draft to you for your review. Please contact me with your comments.

The draft has also been sent to the New York State Office of Parks, Recreation, and Historic Preservation and Erie Boulevard Hydropower, LLP. Once we obtain a reply from each reviewer, we will incorporate the necessary changes into a final report that will be submitted to the Federal Energy Regulatory Commission on behalf of the Hudson River-Black River Regulating District to fulfill the requirements of their licence. The project schedule provides 30 days from the date of this letter for your review.

Please call me to discuss the HPMP. We anticipate receiving your final comments in a letter that will be appended to the report. All correspondence regarding the HPMP should be sent to me at the address on this letterhead and copied to Michael Mosher, Hudson River-Black River Regulating District, 350 Northern Boulevard, Albany, New York 12204.

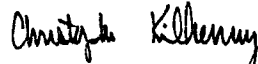
CERTIFIED DBE/WBE IN NEW YORK, NEW JERSEY, MAINE, NEW HAMPSHIRE, VERMONT,
MASSACHUSETTS, CONNECTICUT, PENNSYLVANIA,
AND NEW YORK CITY AGENCIES

www.hartgen.com

[email: albany@hartgen.com](mailto:albany@hartgen.com)

I have also included a copy of the letter that was sent to Mr. Lazore in August and the HAA, Inc. Statement of Qualifications for your files. Please feel free to call us regarding any cultural resource-related concerns you may have in the future.

Sincerely Yours,



Christopher Kilkenny, Project Director

cc. Michael Mosher, Hudson River Black River Regulating District

enc. Draft HPMP, HAA, Inc. Statement of Qualifications, and a copy of the letter to Mr. Lazore

Hartgen Archeological Associates, Inc.

CULTURAL RESOURCE SPECIALISTS
524 Broadway 2nd Floor, Albany, New York 12207
PHONE (518) 427-0382 – FAX (518) 427-0384

April 22, 2004

Curtis Lazore
Cultural Resource Coordinator
Haudenosaune
Akwesasne Mohawk Territory
Via P.O. Box 366
Roosevelt, NY 13683

Re: Draft Report
Great Sacandaga Lake
Historic Properties Management Plan
Hamilton, Fulton, and Saratoga Counties, New York

Dear Mr. Lazore,

Hartgen Archeological Associates, Inc. is pleased to present the draft historic properties management plan (HPMP) that was prepared on behalf of the Hudson River-Black River Regulating District for Great Sacandaga Lake in Hamilton, Fulton, and Saratoga Counties, New York. The purpose of the HPMP is to ensure that the operations of the Regulating District are in accordance with Section 106 of the National Historic Preservation Act. We are submitting this draft to you for your review. Please contact me with your comments.

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Please call me to discuss the HPMP. We anticipate receiving your final comments in a letter that will be appended to the report. All correspondence regarding the HPMP should be sent to me at the address on this letterhead and copied to Michael Mosher, Hudson River-Black River Regulating District, 350 Northern Boulevard, Albany, New York 12204.

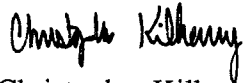
CERTIFIED DBE/WBE IN NEW YORK, NEW JERSEY, MAINE, NEW HAMPSHIRE, VERMONT,
MASSACHUSETTS, CONNECTICUT, PENNSYLVANIA,
AND NEW YORK CITY AGENCIES

www.hartgen.com

email: albany@hartgen.com

As you requested in August, I have also included HAA, Inc. Statement of Qualifications for your files. Please feel free to call us regarding any cultural resource-related concerns you may have in the future.

Sincerely Yours,



Christopher Kilkenny, Project Director

cc. Michael Mosher, Hudson River Black River Regulating District
enc. HPMP and HAA, Inc. Statement of Qualifications

APPENDIX D: The New York Archaeological Council's *Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State*



New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

Bernadette Castro
Commissioner

May 5, 2005

Dear Archeological Consultant,

The Office of Parks, Recreation and Historic Preservation (OPRHP), which acts as the State Historic Preservation Office (SHPO), routinely reviews archeological survey reports in accordance with Section 106 of the National Historic Preservation Act and Section 14.09 of the New York Parks, Recreation and Historic Preservation Law when there is federal or state funding, permitting or involvement in the projects. Additionally, local planning boards or other Lead Agencies often request OPRHP review of archeological reports as part of the State Environmental Quality Review Act (SEQRA) process. As part of our ongoing effort to streamline our review process and to provide more effective and efficient management of New York State's Historic Preservation program the OPRHP has been reviewing many of our programs and guidelines.

Attached you will find the revised "State Historic Preservation Office Phase I Archaeological Report Format Requirements." The newly updated guidelines will be in effect as of May 30, 2005. We have established a transition period for you to become acquainted with the new OPRHP standards, understanding that many reports may already be in progress. Mindful of this potential issue we have established the following timetable for the full implementation of the new standards. All reports received between June 30, 2005 and August 30, 2005 will be reviewed using the new standards and review comments will be provided to the authors. After August 30, 2005 the OPRHP will no longer review reports that do not conform to the new standards. Non-conforming reports will be returned to the author.

We look forward to working with you to implement these new guidelines over the coming months. If you have questions regarding the new format, please call our office at (518) 237-8643.

Sincerely,

John A. Bonafide
Historic Preservation Services
Coordinator

New York

State Historic Preservation Office (SHPO)

Phase I Archaeological Report Format Requirements* (4-05)



1. **Management Summary.** Please see Appendix A for required format.

2. **Phase IA Literature Search and Sensitivity Assessment Guidelines**

The goals of the Phase IA investigation are to inform subsequent testing strategies and to provide the contextual framework within which to interpret identified historic properties.

The SHPO requests that separate Phase IA Reports are submitted only when the Phase IA confirms disturbance in a large portion of the project area or when the project is in an urban setting and concurrence regarding the proposed testing strategy is sought. Otherwise, a combined Phase IA/IB Report is recommended.

- A. **Project Description**

Concise discussion of the undertaking, including all associated impacts. This discussion is especially important when the Area of Potential Effect (APE) is different than the project boundaries.¹

- B. **Maps and Figures**

All maps and figures must be clearly legible to the reader and include:

1. Project area/APE accurately delineated with a clean solid line. Circled or generalized boundaries are not acceptable nor is the use of highlighter or marker. Please note that both the APE and the project boundary must be delineated, if different.
 2. North arrow.
 3. Map title.
 4. Map author.
 5. Publication date.
 6. Bar scale and other scales as appropriate.
 7. Key.

- C. **Project Map**

The project map must be of sufficient scale to be easily legible to the reader and must include:

1. Project area/APE limits clearly delineated.
 2. North arrow.

¹ As defined in 36 CFR Section 800.16(d) the "Area of Potential Effect means the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist". Therefore an APE definition needs to consider any areas of direct construction impact as well as access roads, staging areas, utility lines or any other areas that the construction contractor may have access to in association with a project. It is also important to consider the indirect effects which may occur including increased access, increased erosion, increased run-off, deposition, etc. to adjacent areas. While it may not be possible to test areas not under the ownership of the applicant, the potential impact to such areas needs to be considered if the potential for archaeological sites is present.

* Please note this format does not apply to New York State Department of Transportation projects.

3. Shovel test locations - The map key must distinguish between shovel tests that include prehistoric artifacts only, historic artifacts only and both prehistoric and historic artifacts. Please do not identify or number shovel tests in areas not subjected to testing.
4. Photo angles keyed to associated images.
5. Boundaries of prior disturbance, slope greater than 12-15 percent, and areas of permanent standing water.
6. Archaeological site boundaries.
7. Road names (both local and county/state/federal designations).
8. 911 or street addresses for structures within or immediately adjacent to the project area.
9. Map scale no smaller than 1" = 200' - 1:2,400.
10. All maps and figures must be produced in patterns and colors that are clearly legible when photocopied.
11. Bar scale and other scales as appropriate.
12. Key.

D. Project Photographs

1. Photographs must be referred to as photographs and not as figures or plates.
2. Photographs must be 3.5" x 5" in size or larger.
3. Digital photographs must be printed on photo paper.
4. Photographs must be produced at a printer setting of a minimum of 600 dpi.

E. Background Research

1. Research must be focused on the project area.
2. Do not include GENERAL historic and prehistoric contexts.
3. The following items are required:
 - a. Past and present land uses and current conditions illustrated with project photographs.
 - b. Soils description - see Appendix B for required format.
 - c. USDA Soils Map.
 - d. Discussion regarding expectations for depth of cultural deposits. This discussion should thoroughly assess the potential for colluvial, alluvial or other deeply buried soils.
 - e. Sites within a one mile radius - see Appendix C for required format.
 - f. Historic maps - Please provide a concise overview of settlement pattern trends. A detailed written overview of each historic map is not necessary.
 - g. Other relevant background information as necessary.

F. Sensitivity Assessment

1. Prehistoric - this discussion must focus on the site types likely to be identified given the landform(s), environmental setting and the types of sites within one mile.
2. Historic - this discussion must be based on historic map research, regional histories and other relevant historical documents.

NOTE: Please do not include prior ground disturbance in your discussion of sensitivity.

G. Disturbance

1. Discussion of the type(s), depth and extent of disturbance. Common forms of disturbance include previous mining, grading, road cuts, etc. where the original topsoil has been removed. Filling and plowing are not considered disturbance.
2. Documentation of disturbance such as photographs, aerial photographs, soil boring logs, as built drawings, elevation records, etc. must be presented. If such evidence cannot be provided, shovel testing will be necessary to document the disturbance.
3. If soil boring logs are discussed in the body of the report they must be provided as an appendix.
4. Boundaries of areas not tested must be clearly delineated on the project area map and labeled with type of disturbance.

H. Testing Recommendations

1. Discussion regarding the testing strategy warranted for the Phase IB investigation.
2. For project areas characterized by multiple building and demolition episodes, please provide a composite Map Documented Structure (MDS) and standing structures map with the location of planned excavation units noted and a table summarizing potential archaeological resources organized by building lot.

3. Phase IB Field Investigation Guidelines

- A.** Date of testing, conditions (including season, ground visibility, weather) and description of crew (e.g. project director, crew chief, field tech, etc).
- B.** A complete description of the field methodology that includes a discussion of project impacts.
- C. Subsurface Shovel Testing**
1. Please follow the New York Archaeological Council Standards (1994), Section 2.3.2 with the exception of isolated find spots.
 2. When artifacts are discovered in an isolated shovel test context, a minimum of eight (8) additional shovel tests at 1 m (3.3 ft) and 3 m (10 ft) intervals must be excavated. Eight radial tests should not be excavated when artifacts are found in two or more adjacent or nearby shovel tests since this technique is appropriate only for isolated finds and not for archaeological sites.
 3. When the project area contains many widely dispersed positive shovel tests, please contact the SHPO to discuss additional testing techniques.
- D.** All measurements must be presented in both metric and English.
- E.** Please use the terms, shovel test, test unit and trench to describe the various types of excavation units.
- F.** If the project area includes a standing historic structure or an MDS within its boundaries, the shovel testing interval must be 7.5 m (25 ft) or less in the suspected yard area. When the location of the foundation is known, the first transect of shovel tests must be placed 1 m (3.3 ft) or less from the foundation.

G. Surface Survey

1. When plowed and disked strips are employed, the plowed areas must be a minimum of 3.3 m (10 ft) in width and each plowed strip must include a minimum of two walked transects.
2. Transect centerlines must be spaced 15 m (50 ft) or less apart.
3. Surface visibility must be 70% or greater.
4. It is not acceptable to surface survey corn fields when the corn is 15 cm (6 in) or greater in height.
5. A limited subsurface shovel testing program is required to assess potential variability in depth of plowzone and other soil characteristics of the various landforms present within the APE.
6. When a project area contains many widely dispersed isolated artifacts, please contact the SHPO to discuss additional testing techniques.

H. Archaeological Site Description

1. Concise context statement describing the environmental and cultural setting.
2. Estimated site size (horizontal and vertical) based on artifact distribution, topography, etc. Site boundaries must illustrate maximum possible boundaries until closer interval testing is conducted. Please note that the site boundaries for each site identified must be included on the project map so that the relationship of the site to the APE is clear.
3. Site characteristics including period of significance, site type, etc.
4. Summary of artifact types and quantity in table format. Please refer to Appendix D for examples of artifact tables. Open and closed historic artifact dates should be provided when appropriate.
5. Artifact distribution and density maps. Please refer to Appendix E for examples of artifact maps.
6. Integrity. Please refer to National Park Service Bulletin, *Guidelines for Evaluating and Registering Archeological Properties* for a definition of integrity. National Park Service Bulletins may be found online at: <http://www.cr.nps.gov/nr/publications/bulletins.htm>.
7. Direct and indirect impacts of the proposed project on identified sites.
8. Photographs or drawings of representative and diagnostic artifacts with a scale.
9. Repository of the artifact collection and project records.
10. Recommendations.

4. Appendices

A. Complete Shovel Test Records. Shovel test records must be submitted in table form. See Appendix F for suggested format.

B. SHPO Site Forms.

1. SHPO site forms must be included in the report.
2. A second, unbound copy of the site forms must be submitted with the Phase I Report.
3. When noting the USGS Map, please reference only the quadrangle on which the site is located.

C. Artifact Catalog. At minimum please include:

1. Phase of Survey
2. Shovel Test/Unit/Feature
3. Level
4. Depth (cm)
5. Description
6. Comments
7. Count
8. Weight (g)
9. Date Range

D. Please note that it is no longer necessary to include a Vita.

5. Report Format

- A.** 10 point font.
- B.** Single line spacing with a line between paragraphs.
- C.** One inch margins.
- D.** Comb binding is preferred. At least one half of the binding should be free of writing so that report number and county name can be placed on the binding by SHPO staff.
- E.** Double sided pages are preferred.
- F.** Appendices must be double-sided.

Additional Notes: Phase II and Phase III Investigations

1. Census and deed record information must be included and discussed in all Phase II historic site reports. Please summarize this information in tables. Please see Appendix G for suggested format.
2. Phase II Reports must contain a concise discussion of the sites(s) eligibility or non-eligibility for listing on the National Register that includes the rationale for the determination.
3. Mechanical stripping at the Phase II level of investigation should not be undertaken except in unusual circumstances and after consultation with the SHPO is completed.
4. A representative sample of test units, features and trenches must be illustrated with both photographs and profile and plan view drawings. Original field drawings are not acceptable since they are dark and difficult to read when presented as a photocopied or scanned image. Please provide the line drawing and accompanying photograph on the same page.
5. Please provide copies of all radiocarbon dating analysis reports as an appendix. In the text of the report, please provide radiocarbon dates as a range of time, the laboratory sample identification number, and the type of material dated (wood, charcoal, corn, etc.). When presenting the radiocarbon dates please give both 1-sigma (68.3% confidence level) and 2-sigma (95.4% confidence level) ranges because all the dates within a range are equally valid. Example: -2σ (-1σ [intercept] $+1\sigma$) $+2\sigma$. These time ranges can be obtained for free at: <http://depts.washington.edu/qil/calib/>. If several radiocarbon dates are presented, the SHPO recommends that they be displayed in table form.
6. The copy of the Phase III Report for the SHPO Library must be on acid free paper and must contain original photographs. Additionally, the Report must be provided on a CD in .pdf format.
7. Phase II and Phase III Reports must follow the Phase I Report formatting requirements outlined above in Section 5.
8. Updated SHPO site forms must be included in Phase II and Phase III Reports. A second, unbound copy of the site form(s) must also be submitted.
9. Please refer to National Park Service Bulletins, *Guidelines for Evaluating and Registering Archeological Properties* (2000) and *How to Apply the National Register Criteria for Evaluation* (1995) for guidance relating to National Register eligibility.
10. The SHPO requests that the following Human Remains Discovery Protocol be included in all relevant documents.

**State Historic Preservation Office/
New York State Office of Parks, Recreation and Historic Preservation
Human Remains Discovery Protocol**

In the event that human remains are encountered during construction or archaeological investigations, the State Historic Preservation Office (SHPO) requires that the following protocol is implemented:

- At all times human remains must be treated with the utmost dignity and respect. Should human remains be encountered work in the general area of the discovery will stop immediately and the location will be immediately secured and protected from damage and disturbance.
- Human remains or associated artifacts will be left in place and not disturbed. No skeletal remains or materials associated with the remains will be collected or removed until appropriate consultation has taken place and a plan of action has been developed.
- The county coroner and local law enforcement as well as the SHPO and the involved agency will be notified immediately. The coroner and local law enforcement will make the official ruling on the nature of the remains, being either forensic or archeological. If the remains are archeological in nature, a bioarchaeologist will confirm the identification as human.
- If human remains are determined to be Native American, the remains will be left in place and protected from further disturbance until a plan for their protection or removal can be generated. The involved agency will consult SHPO and appropriate Native American groups to determine a plan of action that is consistent with the Native American Graves Protection and Repatriation Act (NAGPRA) guidance.
- If human remains are determined to be Euro-American, the remains will be left in place and protected from further disturbance until a plan for their avoidance or removal can be generated. Consultation with the SHPO and other appropriate parties will be required to determine a plan of action.

Appendix A: Management Summary

(Modified from the New York State Education Department's 2004 Work Scope Specifications)

SHPO Project Review Number (if available):

Involved State and Federal Agencies (DEC, CORPS, FHWA, etc):

Phase of Survey:

Location Information

Location:

Minor Civil Division:

County:

Survey Area (Metric & English)

Length:

Width:

Depth: (when appropriate)

Number of Acres Surveyed:

Number of Square Meters & Feet Excavated (Phase II, Phase III only):

Percentage of the Site Excavated (Phase II, Phase III only):

USGS 7.5 Minute Quadrangle Map:

Archaeological Survey Overview

Number & Interval of Shovel Tests:

Number & Size of Units:

Width of Plowed Strips:

Surface Survey Transect Interval:

Results of Archaeological Survey

Number & name of prehistoric sites identified:

Number & name of historic sites identified:

Number & name of sites recommended for Phase II/Avoidance:

Results of Architectural Survey

Number of buildings/structures/cemeteries within project area:

Number of buildings/structures/cemeteries adjacent to project area:

Number of previously determined NR listed or eligible buildings/structures/cemeteries/districts:

Number of identified eligible buildings/structures/cemeteries/districts:

Report Author(s):

Date of Report:

Appendix B: Project Area Soils.

Name	Soil Horizon Depth cm (in)	Color	Texture, Inclusions	Slope %	Drainage	Landform
Ovid Silt Loam	A 0-26 cm (0-10 in) B 26-53 cm (10-20 in) C 53-158 cm (20-60 in)	VDk GBrn Dk Brn RBrn	Si SiCl/ClLo Grl Lo	0-3	Well	Glacial Lake Plain

KEY:

Shade: Lt - Light, Dk - Dark, V-Very

Color: Brn - Brown, Blk - Black, Gry - Gray, GBrn - Gray Brown, StrBrn - Strong Brown,
RBrn - Red Brown, YBrn - Yellow Brown

Soils: Cl - Clay, Lo - Loam, Si - Silt, Sa - Sand

Other: / - Mottled, Grl - Gravel, Cbs - Cobbles, Pbs - Pebbles, Rts - Roots

Appendix C: Archaeological Sites within One Mile of the Project Area.

NYSOPRHP Site #	Additional Site #	Distance from APE m (ft)	Time Period	Site Type
A02925.000059	NYSM 3186	305 m (1000 ft) SE	Early Archaic	Camp

Appendix D: Artifact Table Examples.

Table 3. Mean Dates of Diagnostic Artifacts and Vessels from the Brown Site, A01142.000029.

Unit	Horizon	Total Artifacts	# Diagnostic Artifacts	Mean Date (Diagnostic Artifacts)	# Diagnostic Vessels	Mean Date (Vessels)
1	Ap	169	19	1846	10	1841
2	Ap	134	13	1854	9	1848
3	Ap	338	42	1851	15	1852
4	Ap	340	37	1852	11	1856
4	Pipe Trench	2	2	1810	2	1810

Table 4. Artifacts Recovered from the Brown Site, A01142.000029.

Functional Group	Number of Artifacts (%)
0 (Unaffiliated)	127 (13%)
1 (Food Related)	325 (33%)
2 (Food Remains)	50 (5%)
3 (Architectural)	413 (42%)
6 (Clothing)	4 (<1%)
8 (Lighting)	8 (1%)
10 (Smoking)	32 (3%)
15 (Faunal)	24 (2%)

Appendix D: Artifact Table Examples.

Table 8. Vessel Wares from the Brown Site, A01142.000029.

Type of Ware	Material Type	Number of Vessels (%)
Whiteware	Refined Earthenware	37 (63%)
Ironstone	Refined Earthenware	9 (15%)
Redware	Utilitarian	4 (7%)
Stoneware	Utilitarian	3 (5%)
Pearlware	Refined Earthenware	2 (3%)
Yellowware	Utilitarian	2 (3%)
Undifferentiated Refined Earthenware	Refined Earthenware	1 (2%)
Porcelain	Porcelain	1 (2%)

Table 9. Decorations of Refined Earthenware Vessels from the Brown Site, A01142.000029.

Vessel Decoration	Color(s)	Number of Vessels (%)
Transfer Printed	Blue, Black, Purple, Red, Wine	18 (31%)
"Flow" Transfer Printed	Blue, Black	3 (5%)
Handpainted	Blue, Red, Green/Black	5 (9%)
Sponge Decorated with Handpainting	Blue	1 (2%)
Sponge Decorated	Green, Blue	2 (3%)
Annular Banding	Blue, Brown/Blue	3 (5%)
Shell Edged – Unscalloped	Blue	1 (2%)
Shell Edged – Scalloped	Blue	3 (5%)
Undecorated	—	12 (20%)

Appendix D: Artifact Table Examples.

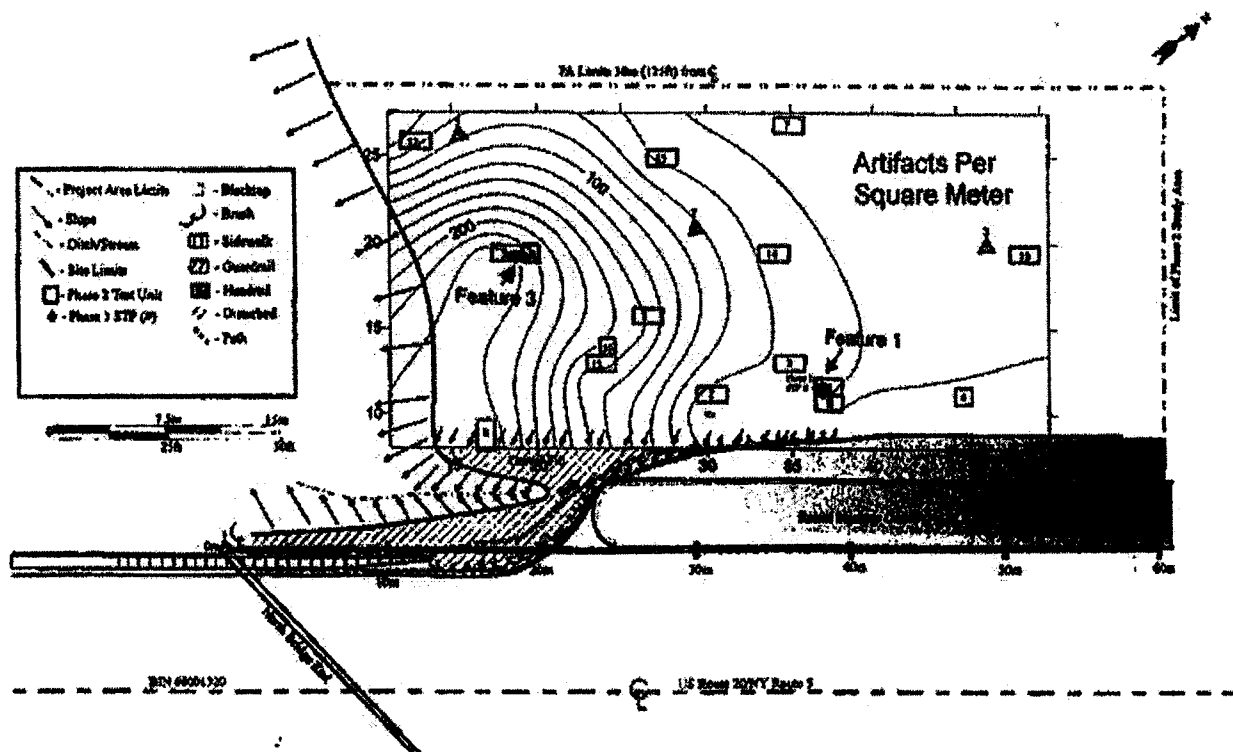
Table 10. Brown Site (A01142.000029) Artifact Distribution.

Unit	Unaffiliated	Food Related	Food Remains	Architectural	Clothing	Lighting	Smoking	Faunal Remains
1	26 (15%)	43 (25%)	6 (4%)	84 (50%)	0 (0%)	0 (0%)	8 (5%)	2 (1%)
2	17 (13%)	55 (41%)	6 (5%)	50 (37%)	0 (0%)	0 (0%)	5 (4%)	1 (1%)
3	34 (10%)	118 (35%)	18 (5%)	141 (42%)	2 (1%)	3 (1%)	8 (2%)	14 (4%)
4	51 (15%)	108 (32%)	20 (6%)	138 (40%)	2 (1%)	5 (2%)	11 (3%)	7 (2%)

Appendix D: Artifact Table Examples.

Prehistoric Artifact Categories	TU 1	TU 2	TU 3	TU 4	TU 5	TU *6	TU 7	TU 8	TU *9	TU 10	TU 11	TU 12	TU 13	TU 14	TU 15	TU *16	Total Count
Chert Flakes	296	36	79	43	641	20	15	515	264	35	64	53	249	65	73	143	2,591
Retouched/Utilized Flks	4	1	4	1	5			3	2	2	1	2	9	1		2	37
Projectile Point Frags					1		1	3	2			1				2	10
Biface Frags					4			1	2		1		2				10
Cores/Core Frags	1	1			1		1	1	1				3		1		10
Hammerstones				4			1		1							1	7
Net Sinkers					1				1			1	1				4
Abraders	1						1										2
Fire Cracked Rocks		2	2	192	12		2		5		53		1	2	1	1	273
Total Artifacts	302	40	85	240	665	20	21	523	278	37	119	57	265	68	75	149	2,943

*Note TU 6,9 and 16 are 1x1 m (3.3x3.3ft) and all other test units are 1x2 m (3.3x6.6 ft)



Source: Perrelli, Douglas

2004 Phase 2 Archaeological Site Examination of the Washburn Site PIN 5034.98.121 Replacement of US Route 20 & NY Route 5 Bridge over Cattaraugus Creek. Cattaraugus Indian Reservation, Erie County, New York. Archaeological Survey, SUNY-Buffalo.

Appendix E: Artifact Distribution Map Examples.

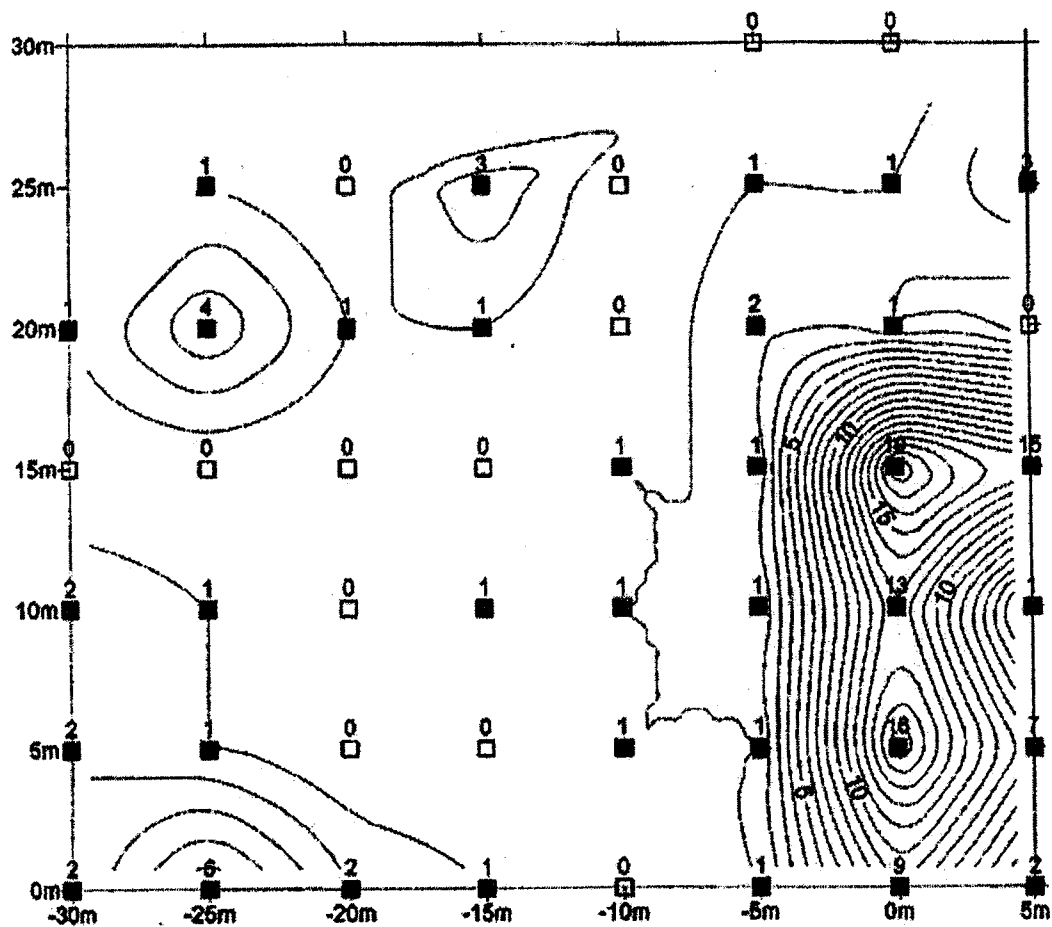
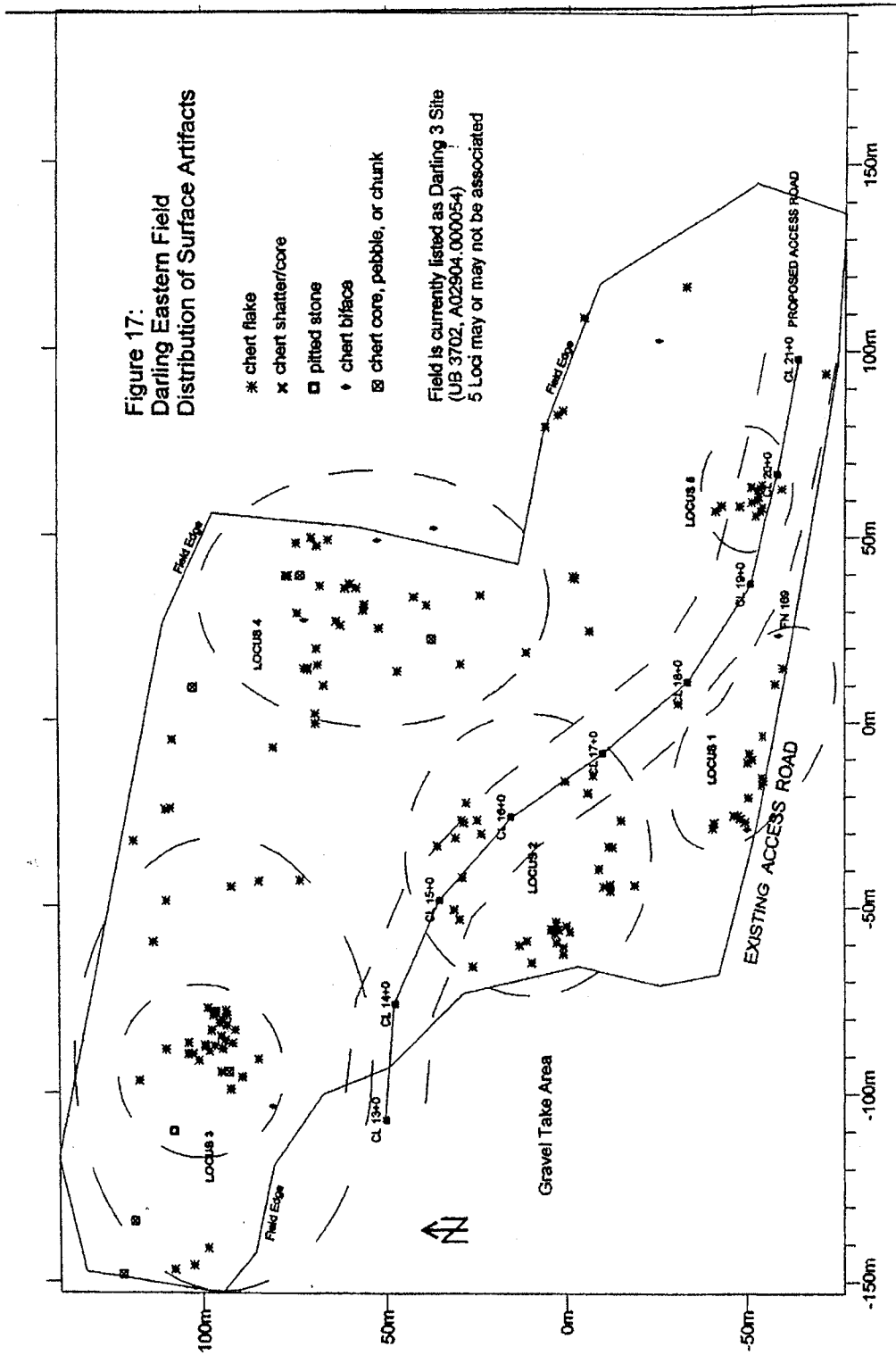


Figure 15: Sketch map of Shovel Tests Excavated at the Darling 2 Site (UB 3683, A02904.000053). Filled squares are positive tests and numbers above the test indicate quantity of debitage recovered. Contour lines relate to artifact frequency and the interval is 1.

Source: Dean, Robert

2004 *Phase I Cultural Resource Investigations: Proposed Darling Development*
 Town of Boston, Erie County, New York. Heritage Preservation &
 Interpretation Inc.

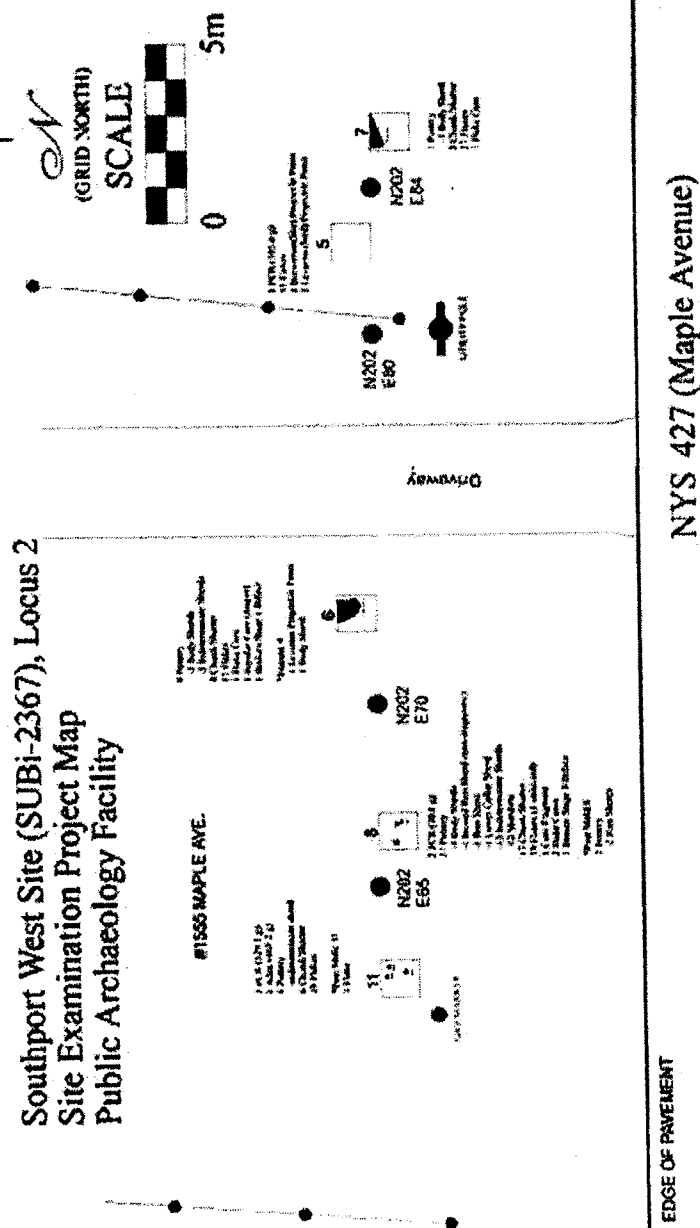
Appendix E: Artifact Distribution Map Examples.



Source: Dean, Robert
2004 *Phase I Cultural Resource Investigations: Proposed Darling Development, Town of Boston, Erie County, New York.*
Heritage Preservation & Interpretation Inc.

Appendix E: Artifact Distribution Map Examples.

Figure 4. Project Map of
Southport West site (SUBI-2361).
Locus 2



Source: Grills, Brian and Nina Versaggi
2003 End-of-Field Summary Widow Smith Site (SUBI-2361) and Southport West Site (SUBI-2367)
Wellsburg Water Line Project, Towns of Ashland and Southport, Chemung County, New York.
The Public Archaeological Facility, SUNY-Binghamton

Appendix E: Artifact Distribution Map Examples.

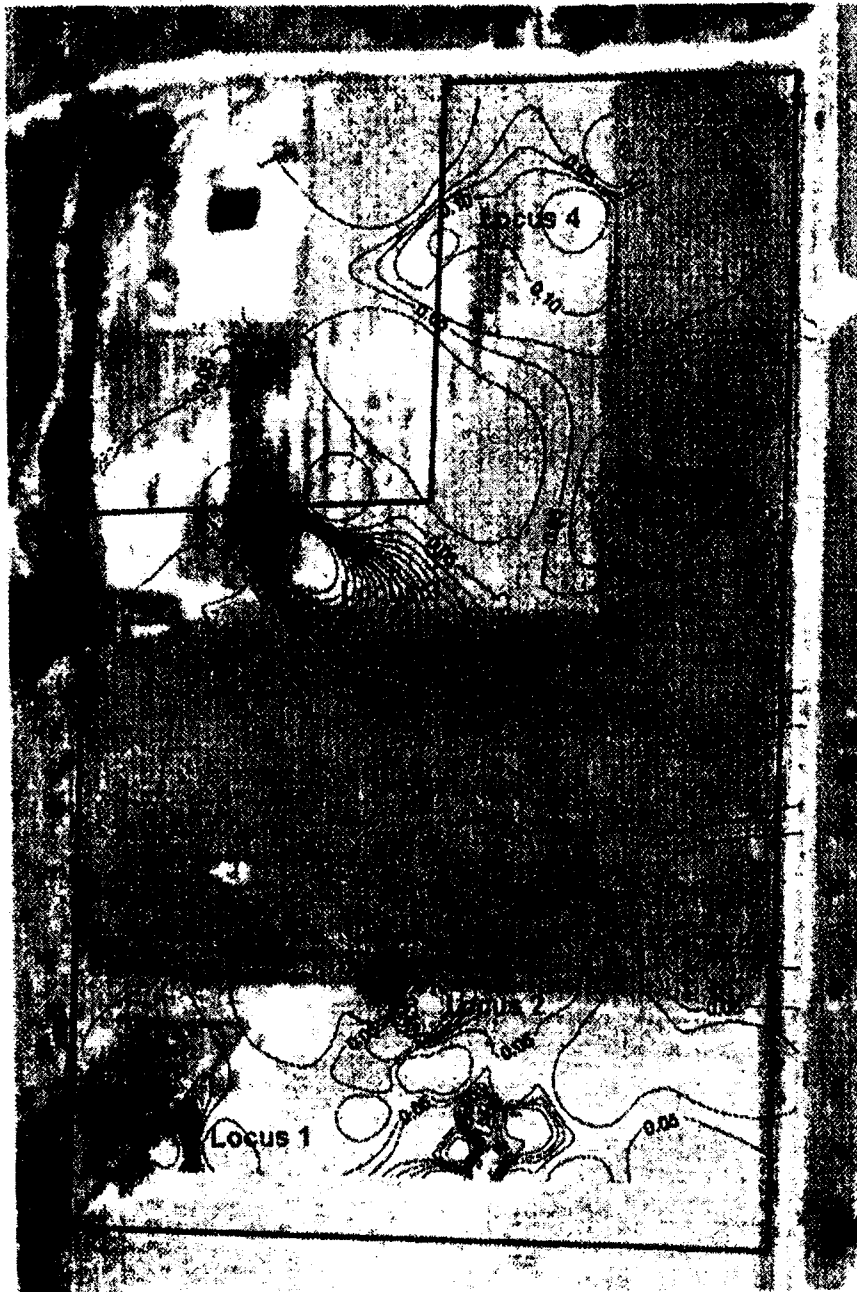


Figure 7. Surface artifact density per square meter and locations of Loci 1 through the ICSD Athletic Fields project area. The surface was generated using distance averaging with a search radius of 75 meters and a weighting function of $1/D^6$. Grid resolution = 2 meters.

Source: Panamerican Consultants
2003 *Phase 1 Cultural Resources Investigation for the Proposed Iroquois Central School District Athletic Fields, Town of Elma, Erie County, New York.*

Appendix E: Artifact Distribution Map Examples.

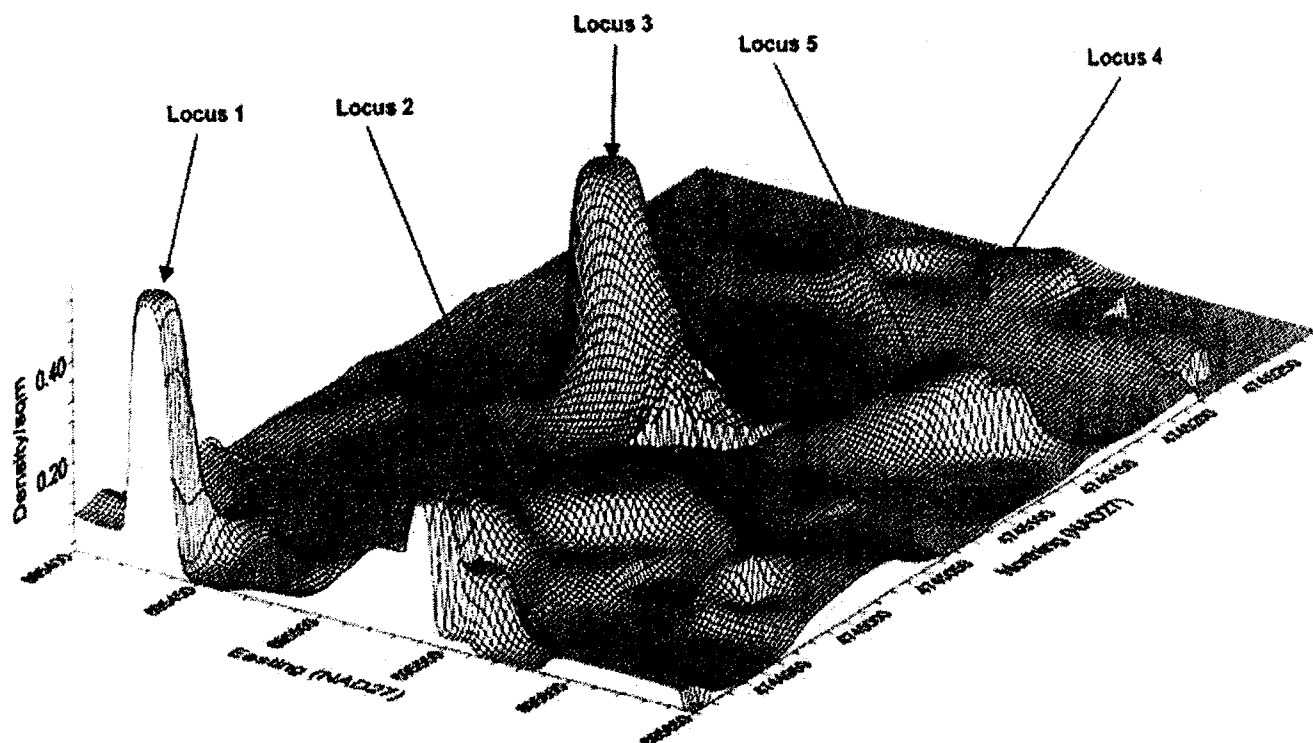


Figure 8. Three-dimensional representation of surface artifact densities per square meter and locations of Loci 1 through 5 within the ICSD Athletic Fields project area. The surface was generated using distance weighted averaging with a search radius of 75 meters and a weighting function of $1/D^6$. Grid resolution = 2 meters.

Source: Panamerican Consultants

2004 *Phase I Cultural Resources Investigation for the Proposed Iroquois Central School District Athletic Fields, Town of Elma, Erie County, New York.*

Appendix F: Shovel Test Table Example.

STP#	Depth (cm)	Soil Description	Artifact Summary
6.72	0-8	YBrn/ Brn SaSi, Grl	2-flakes, 1- blocky chert Frg.
	8-31	YBrn/ GBrn/ Brn SiCl, Grl, Pbs	2-flakes
6.73	0-3	Lt Brn SiCl	---
	3-36	Lt Gry Cl, Pbs	---
6.74	0-17	Gry SaSi, Grl, Pbs, Cbs, Rts	1-flake
	17+	Root Impasse	---
6.75	0-16	Lt GBrn SiSa, Grl, Pbs, Dk Brn	8-flakes, 1-colorless glass
	16-23	Lt GBrn SiCl, Grl, Pbs	---
	23-36	Lt Gry ClSi, Grl, Pbs, Cbs, Dk Brn	---
	36+	Cobbles	---
6.76	0-11	Brn Fine SiSa	---
	11-39	Lt GBrn/ YBrn SiCl, Grl, Pbs	---
6.77	0-32	GBrn Fine SaSi	1-plastic wrapper
	32-33	YBrn ClSi, Blk Cinders	---
	33-65	YBrn ClSi, Cbs	---
	65+	Rock Impasse	---
6.78	0-25	Brn SaSi, Pbs, Rts	---
	25-26	Blk Coarse Sa	---
	26-58	Brn/Dk Brn SaSi, Grl, Cbs	1-aluminum can (7 fl. oz., "Rolling Rock", pull tab top)
	58+	Cobbles	---
6.79	0-14	Brn SaSi, Grl, Pbs	1-mirrored glass, 1-blue transfer-printed whiteware
	14-39	Dk YBrn Fine SiSa, Pbs	---
	39-65	Brn Fine SiSa, Asphalt.	---
	65+	Asphalt	---
6.80	0-48	Lt Gry SaCl, Pbs	1-brown bottle glass
	48-60	GBrn SiCl, Pbs	---
6.81	0-7	GBrn SaSi	---
	7-80	Gry/ GBrn SiCl, Talus Rocks	1 - slag
	80-98	GBrn ClSi	---
6.82	0-24	Hard-packed GBrn SiLo, Grl, Pbs	1-Lt. green flat glass (window)
	24-52	YBrn ClSi, Grl, Pbs	---
6.83	0-7	Brn ClSi, Grl, Pbs	---
	7-25	Brn SiCl, Grl, Pbs	1-melted colorless glass (bottle)
	25-41	Dk YBrn SaSi, Grl, Pbs	---
6.84	0-48	Brn ClSi	1-unid. ferrous metal
	48-56	YBrn SiCl	---
6.85	0-22	GBrn SiLo, Grl	---
	22-52	Brn SaSi	---

SHOVEL TEST KEY:

Shade: Lt - Light, Dk - Dark, V - Very

Color: Brn - Brown, Blk - Black, Gry - Gray, GBrn - Gray Brown, StrBrn - Strong Brown, RBrn - Red Brown, YBrn - Yellow Brown

Soils: Cl - Clay, Lo - Loam, Si - Silt, Sa - Sand

Other: / - Mottled, Grl - Gravel, Cbs - Cobbles, Pbs - Pebbles, Rts - Roots

Appendix G: Deed and Census Record Summary Table Examples.

Table 1. Summary of Deeds Research for the Brown Site, A01142.000029).

Date	Grantor	Grantee	Acreage	Sale Price	Deed liber:page
11/4/1819	Obadiah Cooper	David Wallis	99	\$1,300	LL:122
8/23/1842	Daniel B. Wallis	Stephen Wallis	90	\$2,250	76:261
4/3/1852	Stephen & Gratia Wallis	Peter Lyon James Wolford	115	\$5,750	83:287
4/1/1853	James Wolford Peter & Lavinia Lyon	Allen Holcomb	76.5	\$4,200	85:295
9/1/1853	Allen & Nancy Holcomb	Cornelius Acker	4	\$800	89:638
8/1/1855	Cornelius & Betsey Ann Acker	Joseph Chase [Sr.]	4	\$1000	89:638
4/1/1861	Joseph A. Chase [Jr.] Maxon Chase	Hezekiah Porter	4	\$461	102:303
10/17/1861	Betsey A. [Chase] Mosher Alvira Chase	Hezekiah Porter	4	\$338	102:305
4/4/1864	Hezekiah & Euphama Porter	Olive Brown	1	\$450	109:211
6/1/1923	Jennie Brown Addie [Brown] Graves	Milo & Catherine Weldon	1	\$1	224:74
10/15/1925	Milo & Catherine Weldon	Ernest Wilkes	1	\$75	225:167

Appendix G: Deed and Census Record Summary Table Examples.

Table 2. Summary of Census Research from the Brown Site, A01142.000029).

Census Date	Name	Listed Age
1820 (Federal)	David Wallace Unnamed Male Unnamed Male Unnamed Male Unnamed Female Unnamed Female	26-45 under 10 18-26 26-45 under 10 26-45
1850 (Federal)	Stephen C. Wallace Gratia Wallace Laura Wallace Mary Wallace Eunice Wallace David Cooper	31 32 9 7 under 1 30
1855 (State)	Joseph Chase Betsey Ann Chase Alvira Chase Joseph A. Chase Martha Chase Maxon Chase	41 39 16 11 4 2
1860 (Federal)	Betsey Ann Chase Aloria [Alvira?] Chase Joseph Chase Maxon Chase	42 21 16 7
1865 (State)	Henry H. Brown Olive Brown Adeline Brown Emily J. Brown	46 45 15 5
1870 (Federal)	Henry Brown Olive Brown Jane Brown	51 49 10
1875 (State)	Henry Brown Olive Brown Jennie Brown	57 49 14
1880 (Federal)	Henry Brown Olive Brown	63 63
1892 (State)	Henry Brown Olive Brown Jennie Brown	72 73 32

New York State Historic Preservation Office (SHPO)
Phase I Condensed Report Format
(April 2005)

This format is acceptable for small acreage projects such as cell towers and well pads. Condensed reports must be bound and must include the following components:

1. Management Summary.
 2. Description of Undertaking.
 3. Environmental Setting and Soils, including USDA Soils Map.
 4. Sites Within and Immediately Adjacent to the Project Area.
 5. Historic Maps.
 6. Field Investigation Methodology.
 7. Result of Field Investigation – If an archaeological site(s) is identified, include site description below.
 8. Recommendations.
 9. USGS Quadrangle Map.
 10. Project Map.
 11. Project Photographs.
 12. Shovel Test Table.
-

Archaeological Site Description Format

1. Concise context statement describing the environmental and cultural setting.
2. Estimated site size (horizontal and vertical) based on artifact distribution, topography, etc. Site boundaries should illustrate maximum possible boundaries until closer interval testing is conducted. Please note that the site boundaries for each site identified must be included on the project map so that the relationship of the site to the APE is clear.
3. Site characteristics including period of significance, site type, etc.
4. Summary of artifact types and quantity in table format.
It is recommended that open and closed historic artifact dates are provided when appropriate.
5. Artifact distribution and density maps.
6. Integrity (Please refer to National Park Service Bulletin, *Guidelines for Evaluating and Registering Archeological Properties* for a definition of integrity. National Park Service Bulletins may be found online at: <http://www.cr.nps.gov/nr/publications/bulletins.htm>.)
7. Direct and indirect impacts of the proposed project on identified sites.
8. Photographs or drawings of representative and diagnostic artifacts that includes a scale.
9. Repository of the artifact collection and project records.
10. Recommendations.

Standards for Cultural Resource Investigations
and the Curation of Archaeological Collections
in New York State

by

The New York Archaeological Council

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1.0 INTRODUCTION

Standards for Phase IA, IB, II, and III Cultural Resource Investigations; the Production of Cultural Resource Management Reports; and the Curation of Archaeological Collections, have been developed in order to ensure a degree of uniformity in the approach taken by NYAC archaeologists. It is hoped that other archaeologists, private developers, local, state, and federal agencies will make use of these standards towards the fulfillment of their preservation obligations under a variety of federal, state, and local laws and preservation ordinances.

The purpose of these guidelines is to ensure that archaeological work of the highest caliber is carried out in New York. These guidelines will help to clarify NYAC's expectations for the often diverse approaches to cultural resource investigations utilized by the increasing numbers of individuals and corporate groups that are becoming involved in cultural resource compliance reviews. All professional/supervisory level personnel must meet the qualifications set forth in 36 CFR 61. Their aim is to promote consistent, high-quality performance, and documentation. Although detailed in some cases, these guidelines are not intended to be all-encompassing nor to address all possible situations.

It is likewise expected that published guidelines will result in more acceptable, efficient, and cost-effective research on New York archaeological sites. Innovation beyond the scope of these recommended procedures prepared by the NYAC Standards Committee is expected and encouraged.

Good judgement and common sense must prevail. These guidelines will be subject to periodic revision and refinement.

2.0 PHASE I CULTURAL RESOURCE INVESTIGATIONS: RECONNAISSANCE

2.1 Goals of Phase I Investigations

The primary goals of Phase I Cultural Resource Investigations are to identify archaeologically sensitive areas, cultural/sacred areas, and standing structures that are at least 50 years old, that may be affected by a proposed project and to locate all prehistoric and historic cultural/archaeological resources that may exist within the proposed project area. The goals of Phase I work need to be flexible to reflect the size of the project and stage of project planning, and can be undertaken in subphases (Phase IA and IB), if appropriate.

When a review process determines that a project will not affect any known or recorded site(s) but is located in an area where insufficient previous survey has been conducted, and where there is a moderate or high probability that previously unrecorded sites may occur, Phase I cultural resource investigations should be conducted. The purpose of these investigations is to locate *all* surface and/or subsurface sites that occur within the project area. Site locations are frequently discovered as a result of documentary research, informant interviews, land-surface inspection, and subsurface testing.

Due to the complexities often characterizing projects and sites located in urban settings, these guidelines apply primarily to projects situated in non-urban environments. At some point in the near future, guidelines will be established for Phase I work in urban environments (cf. Pennsylvania guidelines) as well as underwater contexts.

2.2 Phase IA: Literature Search and Sensitivity Assessment

Phase IA investigations are intended to gather information concerning the environmental/physical setting of a specific project area as well as its cultural setting. It is the interrelationship of the physical environment and the cultural/historical setting that provides the basis for the sensitivity assessment. This research should include a consideration of relevant geomorphology and soils information, culture history, and previous archaeological research to provide for the development of explicit expectations or predictions regarding the nature and locations of sites. Regardless of the project size, archaeologists should consider all relevant data in developing these expectations. The specific sources from which background information should be drawn will vary according to project size and the availability of comparative data. The information presented and analyses performed should assist reviewers in understanding and evaluating the importance of environmental and cultural/historical resources within and surrounding the project area. Finally, it should also provide the rationale for developing the research design, the sensitivity assessment, and for selecting appropriate Phase IB field methodology as well as for evaluating project impacts.

2.2.1. Environmental/Physical Setting

A summary of relevant information, with accompanying maps (where appropriate), concerning the environmental/physical setting should address the following: geology, soils, hydrology, physiography/geomorphology, climate, flora, fauna, and recent human/natural disturbances.

2.2.2. Background Research

Background research should include a preliminary review of manuscripts, maps, atlases, historical documents, unpublished notes, previous surveys, state and local site inventories, and published material relevant to the project area to locate possible sites and provide the basis for documenting the cultural setting for the project area. The specific sources from which background information should be drawn will vary according to project size and the availability of comparative data. Where information pertaining to the specific project area or environs is not available, expectations should be developed from regional or state plans for the conservation of archaeological resources, investigations of similar environments outside the local area, or other environmental data. The results of this background research should be included in the report as documentation and justification for the sensitivity assessment and site location predictions.

The following list of topics may be useful in considerations of cultural setting. A comprehensive treatment of the cultural setting of a project area will most likely only involve some subset of this

list. These have been adapted from a list of historic contexts developed by the New York State Historic Preservation Office (NYS SHPO).

- Transportation
- Economy
 - Industry
 - Agriculture
- Social Organization
 - Government
 - Education
- Social Change
 - Contact and Settlement Post-Revolutionary
 - War Expansion
 - Social and Political Movements
- Religion
- Communication
- Recreation
 - Entertainment
 - Tourism
- Demography
 - Immigration
 - Emigration
- Community Planning and Development
- Engineering
- Architecture
- Science
- Art and Literature
- Ethnicity

It is recognized that a variety of individuals, especially those interested in or living near a specific project area, may have important information not available from any other source. Such information can enhance the data gathered from the written record alone. Informant interviews with persons (e.g. avocational archaeologists, landowners, state or local government agency staff) who may be familiar with the project area and possible archaeological sites can make a valuable contribution to these investigations.

A field visit to the project area should be undertaken to determine the possibility of prior disturbance/destruction and the physiographic evidence for potential sites. Where conditions at the time of the field visit differ from those portrayed on map resources, the current conditions should be described and the map resources amended accordingly. If the initial field check shows that any sites have been previously destroyed, or that for other obvious reasons no sites exist there, the appropriate review agency should be consulted. It may be determined that no further Phase I survey is required. The basis for such conclusions must be submitted in writing with supporting documentation (e.g. building/grading plans, photographs).

2.2.3 Sensitivity Assessment

An estimate of the archaeological sensitivity of a given area provides the archaeologist with a tool with which to design appropriate field procedures for the investigation of that area. These sensitivity projections are generally based upon the

following factors: statements of locational preferences or tendencies for particular settlement systems, characteristics of the local environment which provide essential or desirable resources (e.g. proximity to perennial water sources, well-drained soils, floral and faunal resources, raw materials, and/or trade and transportation routes), the density of known archaeological and historical resources within the general area, and the extent of known disturbances which can potentially affect the integrity of sites and the recovery of material from them.

The analysis of data gathered for the environmental/physical setting and the cultural setting must address the following questions: Given the data gathered for the environmental/physical setting and the cultural setting of the project area what is the likelihood of finding prehistoric or historic cultural/archaeological resources? What types of sites are likely to be found? What is the likely condition of sites that might be found?

2.3 Phase IB: Field Investigation Guidelines

Appropriate field investigations comprise a systematic, on-site field inspection designed to assess archaeologically sensitive areas and environmental characteristics relevant to site locations and formation processes. Such investigations include, but are not limited to systematic surface survey, subsurface shovel-testing, and remote sensing studies.

Subsurface testing is often the major component of this level of investigation and is required except in those cases in which the presence or absence of resources can be determined by direct observation (e.g. surface survey), by the examination of specific documented references, or by the detailed documentation of prior disturbance of such a degree that all traces of intact cultural resources have been erased.

Field-testing procedures for Phase IB Field Investigations should verify site locations provided by informants, confirm site locations suggested by the literature search, and discover previously unknown sites. The areas to be subjected to a field survey are selected on the basis of the data gathered during the Phase IA evaluation and all probable locations of project construction, staging areas, or any other areas of potential impact. Detailed evaluation of specific resources is not carried out at this level; however, it is necessary to record and describe sites as fully as possible to aid in the formulation of recommendations for avoidance if site boundaries are adequately defined or further evaluation. The precise locations of identified resources with respect to areas of impact of the proposed project must be clearly established.

Because portions of project areas often differ in the likelihood of containing sites, contracted archaeologists encountering or anticipating considerable diversity in site densities within the project area should devise survey strategies in consultation with the appropriate review agency. In cases where sampling specific portions (or strata) of a project area is planned, sampling designs that ensure equal probability of identifying sites in all surveyed locales must be devised. Some areas may, however, be eliminated

from survey due to the lesser probability that sites would occur. Areas characterized by more than 12-15 per cent slope may fall into this category; obvious exceptions to elimination of such areas of slope would include terraces and possible rockshelter sites. Where the field testing or literature search reveals areas of disturbance in which no sites could remain intact, documentation of this disturbance via photographs, construction plans, stratigraphic profiles, soil borings, etc. must be included in the report. Areas of standing water may also be excluded from testing, if appropriate and if reasonable explanations for avoiding such areas are presented. Areas not subjected to intensive archaeological investigations should be documented photographically in the archaeological report and on project area maps.

2.3.1 Systematic Surface Survey

Areas that have not been plowed and disked in the past should not be plowed or disked to facilitate a systematic surface survey. If previous plowing cannot be documented, a limited shovel-testing program to document the presence of a plowzone should be undertaken. Each systematic surface survey should be performed according to the following standards, unless alternative methods have been developed in consultation with the appropriate review agency. A limited subsurface shovel-testing program should also be conducted in conjunction with (and prior to) all surface surveys in order to assess plowzone depths and characteristics of underlying soils.

If all non-wooded, previously cultivated portions of the project area can be plowed and disked, a systematic surface investigation can be undertaken once the area has been prepared and subjected to a steady rainfall. Systematic controlled surface surveys may only be performed if adequate surface visibility (i.e. 70% or better) exists. Plowing and disking in strips with intervening areas of unplowed ground no wider than 15 meters may be an acceptable means of field preparation if and only if shovel tests are excavated at 15-meter intervals throughout the unplowed areas.

Archaeological field crews should align themselves at 3-meter to 5-meter intervals in a straight line and pass across the prepared areas searching the surface for artifacts. Each artifact find spot or artifact concentration should be clearly marked and assigned a unique field number. After the artifacts have been flagged, a surface map identifying artifact locations and/or concentrations, depending upon the specific situation and number of artifacts, should be prepared.

2.3.2 Subsurface Shovel-Testing

Subsurface shovel-testing programs should be performed according to the following standards, unless alternative methods have been developed in consultation with the appropriate review agency. Where surface visibility is impaired (e.g. grass lawns, wooded areas), the field survey consists of the excavation of 30- to 50-centimeter minimum diameter test units to undisturbed or non-artifact bearing subsoil at a maximum of 15-meter intervals (or 2 per 460 square meters of surface area = 16 tests per acre = 44 tests per hectare). All excavated soils should be screened through 1/4-inch hardware cloth.

Transects should be established with a compass and taped and/or paced measurements depending upon local conditions. Transects and shovel tests should be numbered in a systematic fashion. Soils excavated from shovel tests should be carefully screened as noted above in order to recover cultural material. All stratigraphic profiles should be described in field notebooks or on appropriate field forms. Information recorded in notebooks should include, but not be confined to, descriptions of soil type, texture, color, condition, and the presence or absence of cultural materials or cultural features.

Documentation of field work activities should include the recording of field observations in notebooks and on appropriate forms. Photography should be employed to document field conditions, observations, and field techniques.

When cultural materials are discovered in isolated shovel-test units, a minimum of four additional units should be dug in the vicinity or the initial test units should be expanded to insure against mistaking evidence of actual sites for "stray finds."

If no cultural resources identified through the Phase IA and/or Phase IB surveys will be impacted by the proposed project, then the survey process is complete. If cultural resources identified by these studies are within the proposed impact area, further evaluation may be required to determine the potential eligibility of the resource(s) for inclusion in the State or National Registers of Historic Places (NRHP). The extent of additional cultural resource study may be reduced by project modifications (e.g. realignment, relocations) that avoid or minimize potential impacts, only if sufficient testing to define valid site boundaries or buffer zones has been completed.

2.4 Phase IB Report

The final Phase IB report should present the results of the field investigations, including a description of the survey design and methodology; complete records of soil stratigraphy; and an artifact catalog including identification, estimated date range, and quantity or weight, as appropriate. The locations of all test units must be accurately plotted on a project area map, with locations of identified resources clearly defined. Photographs that illustrate salient points of the survey are an important component of the final report. Detailed recommendations and supporting rationale for additional investigation must be incorporated into the conclusions of the Phase IB study. For a detailed summary of the requirements for Phase I Reports refer to the NYAC Standards for the Production of CRM Reports (Section 6).

2.5 Disposition of Collections

Provision for the responsible curation of the archaeological collection (material remains and associated records) generated as a result of Phase I investigations, is an integral part of any reconnaissance-level survey. Collections made during Phase I field investigations are often the only collections made from a site, especially if mitigation measures include site avoidance. These collections may represent the remains of resources eligible for listing on the State and/or National Register. However, since the

sites will be avoided, no Phase II investigations are conducted and evaluation of the site cannot be completed based solely upon the results of Phase I work. Arrangements must be made in advance of any field work for the proper processing, documentation, and curation of collections as outlined in Standards for the Curation of Archaeological Collections (Section 7).

3.0 PHASE II CULTURAL RESOURCE INVESTIGATIONS: SITE EVALUATION

3.1 Goals of Phase II Investigations

The primary goals of Phase II Cultural Resource Investigations are to obtain detailed information on the integrity, limits, structure, function, and cultural/historical context of an archaeological site sufficient to evaluate its potential National Register eligibility. These objectives necessitate the recovery and analysis of artifacts, their context and distribution, and any other pertinent data necessary for an adequate evaluation. Based on this information, each site can be assessed to determine its eligibility for the State or National Registers of Historic Places. A site's significance and eligibility are directly related to data collected during a Phase II investigation, the site's integrity, research questions that may be answered at the site, and the site's importance in relation to the known archaeological resource base.

A site is eligible for the National Register if it meets one or more of the following criteria (as set forth in 9 NYCRR 427 and 428 or 36 CFR 800):

- A. Associated with events that have made a significant contribution to the broad patterns of our history;
- B. Associated with the lives of persons significant in our past;
- C. Embodies the distinctive characteristics of a type, period or method of construction; or represents a significant and distinguishable entity whose components may lack individual distinction; or,
- D. Has yielded, or may be likely to yield, information important in prehistory or history.

Specific data are needed to adequately address these criteria and to prepare a proper site significance evaluation. These include, but may not be limited to, site boundaries and an estimate of site size; temporal and/or cultural affiliation; intra-site artifact/feature patterning; site function; and placement within geographic and interpretive contexts. Additional important factors include the potential that the data present on the site have for yielding additional important information and both the physical and temporal integrity of the site. This multivariate evaluation of site significance will also provide the initial framework on which to base a subsequent data recovery program if one is required as part of the data recovery plan for the site.

3.1.1. Site Boundaries/Site Size

An estimate of the extent of the site is one dimension of variability important in interpreting site significance. Establishing site

boundaries is also essential in determining how much of an impact a proposed project will have on a potentially eligible site. Since project limits are arbitrarily defined in geographic space, it may be necessary to estimate the likelihood that the site extends outside the project boundaries. National Register Bulletin Number 12 outlines various ways of estimating site boundaries. Site size is also an important factor in placing the occupation within regional and cultural settlement systems.

3.1.2 Temporal and/or Cultural Affiliation

Assigning a site to a general time period or specific cultural phase or tradition is an integral aspect of significance. This information helps place the site within an initial context for interpretation and may interface with divisions of interest in the State Plan. Temporal/cultural divisions may vary horizontally across the site or vertically within the natural stratigraphy of the soils.

3.1.3 Intra-Site Artifact/Feature Patterning

Artifacts may be distributed across a site area in a uniform, random, or clustered fashion. Identifying the characteristics of the horizontal and vertical distribution pattern provides the initial structure for interpreting the site. The presence of features (e.g. hearths, pits, cistern, privy, well, postmolds) adds an additional component to the structure of the occupation as well as providing an information-rich element for analyzing the site's placement within the temporal/cultural and subsistence/settlement systems. Power-assisted stripping should not be undertaken as part of site evaluation unless accompanied by intensive recovery and analysis of plowzone data. As a rule, power machinery use should be restricted to data recovery (Phase III) and the removal of sterile overburden.

3.1.4. Site Function and Context

Using the existing information on intra-site clustering, artifact type distributions, and feature presence, a preliminary assessment of site function allows tentative placement of the site within the known temporal, regional, and developmental context of the area. This classification and placement may also relate to study units defined as important in the State Plan.

3.1.5. Data Potential and Site Integrity

The criteria for eligibility to the State and National Registers specifically requires the archaeologist to assess whether the data present on the site have the potential to yield information important to understanding the area's history and prehistory. Part of this assessment necessitates an evaluation of whether the site has suffered physical impacts that have destroyed its research potential. Likewise, archaeologists must determine if temporal components exist in unmixed contexts, whether they be horizontal or vertical, and evaluate to what extent mixing has affected the research potential of the site.

Certain methods have a proven record of efficiently obtaining information relevant to the State or National Register criteria from archaeological sites. These procedures are outlined below.

3.2 Phase II Documentary Research

For both prehistoric and historic sites, Phase II documentary

research provides two types of information: (1) information on the types of data expected from the site as derived from previous work on the site and/or on known sites in the locale and region; and (2) local, regional, and national contexts within which to evaluate the importance of the site and to identify research questions that can be addressed. Research efforts should include more intensive interviews with local informants as well as regional and state experts; specific research of published and unpublished site reports from the region to determine how the site may fit within local and regional chronologies, subsistence/settlement systems, and established theoretical contexts; construction of expectations concerning the types of data that may be present and the types of field strategies appropriate for obtaining these data; and review of research issues and theoretical contexts within the disciplines of anthropology, archaeology, and history to which the data on the site might be relevant. Research questions for historic sites should focus on issues that cannot be addressed solely through written records. The results of this review should form the basis for any future data recovery plans.

3.3 Phase II Field Work/Excavation Guidelines

Phase II field work is not limited to the documentation of the presence/absence of artifacts as in the Phase IB investigations, nor to a specific impact zone as in a Phase III data recovery program. The Phase II investigation is often the last time a site will be examined and the last opportunity for an archaeologist to collect information from the entire site area. It is essential that basic or "base-line" information be collected at the Phase II level of investigation for future reference and research.

3.3.1. Surface Investigation Guidelines

Systematic controlled surface surveys may only be performed if adequate surface visibility (i.e. 70% or better) exists. A systematic surface survey of the project/site area may help provide a tentative estimate of a site's horizontal boundaries and the presence/absence of artifact concentrations. With landowner permission, it may be possible to quickly check outside the project limits to determine if the site extends beyond these arbitrary boundaries. No area should be plowed that has not been previously plowed. Depth of plowing should not exceed the depth of the existing plowzone. This depth can be determined from the Phase IB shovel-testing program.

A systematic surface survey will provide information only on those sites present in the plow zone. If the Phase IB investigations showed that sub-plowzone components are present, then additional subsurface excavations will be necessary to estimate site boundaries. In either case, subsurface testing is warranted to maximize the recovery of information from the plowzone, sub-plowzone, and to appropriately address the criteria for eligibility.

Systematic surface survey includes, but is not limited to, walking close-interval transects (5-meter intervals or less) and marking each artifact location for point provenience mapping or collecting within standard units or cells established at a systematic interval across the project/site area. All artifact locations identified during a systematic surface survey must be documented either through piece plotting or by surface collection cell.

If artifacts are collected by surface cells, both the size and spacing of the units should be determined on the basis of the results of the Phase IB survey and any other appropriate considerations. If a site appears to have low artifact density (e.g. less than 5 artifacts per collection cell), then a larger collection cell may be justified. Collection cell size should not exceed 5 meter x 5 meter since it is unlikely that the plowing process moved artifacts more than this. In general, the size and spacing of the cells should be less than that used in the Phase IB investigations. If the artifacts appear to be evenly distributed across the project area, then an interval as large as 10 meters could be justified. If the artifacts appear to be tightly clustered, then intervals of 5 meters or less may be warranted.

In the case of historic sites, where evidence of a foundation was found during the Phase IB investigation, a more clustered or radial pattern of collection could occur using the foundation walls or an historic feature as a focal point.

3.3.2 Subsurface Testing/Excavation Guidelines

Subsurface testing is an essential component of a site evaluation. Methods include, but are not limited to, a systematic shovel-test program, test-unit excavations, and remote sensing. In most cases, the majority of the information used in evaluating a site's significance and eligibility for inclusion on the State or National Registers derives from this testing. As with surface inspection, subsurface investigations should be designed to gather sufficient data to provide an accurate estimate of site boundaries, both for plowzone and sub-plowzone components. In addition, information on the presence and degree of artifact clustering is derived from this method. Artifacts analyzed by cluster contribute to interpretations of site function as does evidence of features collected during testing. Subsurface methods increase the volume of soil examined, thereby increasing the chances of recovering diagnostic cultural material and radiocarbon samples that will help identify the temporal components present. Recovery of tools assists in identifying intra-site structure and contributes to the overall interpretation of site types. Subsurface testing is a major means of assessing the physical and cultural integrity of a site and provides valuable information on the data potential present.

Shovel Tests: The excavation of shovel-test units (round or square no larger than 0.25 square meters) within a project/site area is a quick and efficient method of obtaining site-specific information. In order to obtain data on site boundaries and artifact variability both horizontally and vertically on the site, the spacing and depth of units should be carefully selected. As previously discussed under Surface Investigation Guidelines (Section 3.3.1), information from the Phase IB survey should be used to establish these parameters.

For example, if the results of the Phase IB investigations revealed that a large, uniform distribution of artifacts was present, then shovel tests spaced at 10-meter intervals may be justified. However, if discrete artifact clustering is identified, then intervals no greater than 5 meters are warranted. Similarly, if the Phase IB investigations isolated a sub-plowzone component, then depths of all shovel tests should exceed the maximum depth of artifacts previously identified by at least 10 centimeters. On deep, flood-

deposited soils, it may be prudent to extend all shovel-tests to a minimum depth of 1.0 meter. If information obtained in the previous Phase I investigations, Phase II excavations, or soil borings indicate that deeply buried stratified cultural deposits may exist in a project area, mechanically excavated trenches may be appropriate to determine the presence/absence of such phenomena.

All excavated soil should be screened through hardware cloth no greater than 1/4 inch in size. If it is expected that large numbers of small artifacts may be present, such as beads and micro-flakes, then a sample of the soil should be passed through 1/8-inch or smaller mesh, as well. Artifacts from the plowzone and different soil levels should be provenienced separately.

The results of the shovel-testing program should be sufficient to provide an accurate estimation of site boundaries, at least within the project limits and to prepare a distribution map identifying the amount, degree, and type of artifact clustering present.

Test-Unit Excavations: Test-unit excavations are larger, more rigorously controlled excavation units than shovel-test units. Common types of test units are squares and trenches. Units usually measure a minimum of 1.00 square meter and rarely exceed 5.00 square meters. This range accommodates 1.00 x 1.00 meter squares as well as 1.00 meter wide x 5.00 meter long trenches. The size, configuration, and depth of excavation units are contingent upon parameters derived from the Phase IB survey as well as the information collected during surface survey and shovel-testing.

Excavation units should be placed in those areas of the site most likely to yield data relevant to adequately address the goals and objectives of the Phase II investigations. Placement of test units should reflect the results of the systematic surface survey and/or shovel-testing program as well as the expectations regarding site type/function. For prehistoric sites, this may mean excavation of test units within clusters of high artifact concentrations; on historic sites, placement of units adjacent to foundation walls or in suspected midden locations may be appropriate.

During the Phase II field work, it is not necessary to aim for excavation of a specific sampling fraction of the entire site area. Rather, it is more important to provide coverage of all the artifact clusters and structural features present since these are the areas likely to yield the most information on the site.

The choice of natural vs. arbitrary excavation levels and level thickness should facilitate the controlled collection of information necessary for evaluating site significance. Units should be excavated by hand using trowels or shovel skimmed; features should always be trowelled. It is common for the plowzone to be removed as one natural layer. However, it is rarely appropriate to remove the subsoil as a layer. Instead the subsoil (and unplowed topsoils) should be excavated in arbitrary levels within natural stratigraphic layers. The thickness of each arbitrary level should never exceed 10 centimeters.

In general, all measurements should be recorded in the metric system with English equivalents reported in parentheses. However, in cases of historic sites, when considered appropriate and approved by the SHPO, measurements may be recorded in feet and inches with metric equivalents reported in parentheses. In urban settings, where mechanized equipment is used to remove asphalt and fill, particular care must be taken to maintain vertical and horizontal control via careful measurement in those instances where excavation in predetermined thicknesses is not possible.

All excavation units must have appropriate documentation including profiles of at least one wall, feature plans and profiles, and photographic documentation. All appropriate samples should be collected even when funds are not immediately available for their analysis. For instance, soil samples from features and unit levels and carbon samples should be routinely collected for present or future analysis.

Remote Sensing: Remote sensing covers all techniques that use other than excavation and physical inspection methods to observe and record subsurface phenomena. Frequently, techniques include soil resistivity, proton magnetometer, gradiometer, ground penetrating radar (GPR), and various photographic techniques (aerial, infrared, etc.).

In order for the data collected through the use of remote sensing techniques to be of value in evaluating the nature, extent, and importance of an archaeological resource, caution is necessary in using these techniques and interpreting their results. First, the archaeologist must clearly understand the characteristics of the data recovered and the potential limitations of the technique being utilized. Second, the natural geophysical properties of an area are important and will directly affect the results. Close coordination between the archaeologist and the geophysical specialist are thus necessary to ensure accurate interpretation of the data. Third, the nature and importance of phenomena identified through remote sensing must be evaluated through actual excavation and recording of some, or all of the phenomena unless anomalies will be avoided.

3.4 Phase II Analysis and Report

The archaeologist must provide sufficient information about the site to allow the review agency to make a determination of eligibility to the State or National Register of Historic Places; to assess the expected impacts to the site from the proposed construction; and to offer recommendations to mitigate these adverse impacts either through avoidance, redesign, data recovery, recordation, or a combination of these. The archaeologist should provide an explicit discussion of the site(s) eligibility, or non-eligibility for listing on the State or National Register based on the data collected during the Phase II investigations. The rationale for evaluation of significance should be clearly stated and justified. The report should also include a discussion of the impacts that are likely to occur on the site(s) if the project proceeds as planned and offer appropriate recommendations for resource management or impact mitigation.

If site avoidance is recommended for a cultural resource, the report should include detailed site protection requirements to be implemented before, during, and after construction to ensure that the resource is not accidentally impacted. If Phase III data recovery investigations are recommended for all or part of a site as an appropriate means of mitigation, the archaeologist should provide recommendations that should be used as the basis for developing a data recovery plan (see Section 4.2).

3.5 Urban Contexts

Due to the complex and diverse nature of implementing research methods in urban contexts, Phase II field strategies should be undertaken only after intensive documentary and map research has been completed for the parcel under study. The field strategies selected to obtain sufficient information for addressing the State or National Register criteria should be formulated in consultation with the appropriate reviewing agency.

3.6 Underwater Sites

As with urban contexts, submerged sites constitute a special category of cultural resources. Phase II methods should be designed in cooperation with the reviewing agency in compliance with specific guidelines for the systematic and scientific conduct of these types of investigations.

3.7 Supplemental Phase II Investigations

In specific cases, where a site with unique, historically documented data is excavated, but the Phase II excavations do not recover the physical evidence expected, it may be appropriate for all involved parties to consider additional Phase II investigations, undertaking archaeological monitoring during the initial phases of construction, or site stripping. As an example, if strong documentary evidence exists for the presence of human burials, but none is discovered during the field investigations, it may be appropriate to conduct supplemental monitoring during preliminary site preparation or construction to identify such features if present. Where such monitoring is employed, contingency plans should be made to implement resource evaluation and data recovery and such plans should be accounted for in archaeological and construction schedules. Monitoring is, however, never a substitute for adequate Phase II investigations.

3.8 Disposition of Collections

Provision for the responsible curation of the archaeological collection (material remains and associated records) generated as a result of Phase II investigations at an acceptable repository is an integral part of any site evaluation. Arrangements must be made in advance of any field work for the proper processing, documentation, and curation of collections as outlined in Standards for the Curation of Archaeological Collections (Section 7).

1.0 PHASE III CULTURAL RESOURCE INVESTIGATIONS: DATA RECOVERY

Phase III Cultural Resource Investigations are required if an archaeological/historical resource listed on or eligible for inclusion on the State or National Registers of Historic Places is

identified and impacts to this resource by a proposed project are anticipated. When a data recovery plan is developed, it should be based on a balanced combination of resource-preservation, engineering, environmental, and economic concerns. Mitigation may take the form of avoidance through project redesign, reduction of the direct impact on the resource with data recovery on the portion to be destroyed, data recovery prior to construction, recordation of structural remains, and/or a combination of the above.

4.1 Goals of Phase III Data Recovery/Impact Mitigation

While varying quantities and quality of data are collected during Phase I and Phase II cultural resource investigations, Phase III investigations are specifically designed to recover information contained in a significant archaeological site before all or part of it is destroyed. Thus, the goals of Phase III Data Recovery/Impact Mitigation excavations focus on collecting and preserving cultural, environmental, and any other data of value from a site before it is lost. Due to the project-specific nature of this phase, data recovery plans should be developed on a case-by-case basis in consultation with the SHPO, project sponsor, interested parties, and other involved state and federal agencies.

4.2 Phase III Research Design/Data Recovery Plan

A research design is an integral part of any professional archaeological project. In any Phase III investigation, a research design takes the form of a data recovery plan that must be approved by the SHPO and other involved state and federal agencies prior to commencement of work. The data recovery plan shall be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37) and take into account the Council's publication, Treatment of Archaeological Properties (Advisory Council on Historic Preservation, (draft) 1980). The data recovery plan should reflect a knowledge of the existing archaeological/historical database and research questions considered important at the local, regional, and/or national level. The data recovery plan must provide a detailed discussion of the research topics and questions to be addressed; the types of data that must be gathered in order to address these questions; strategies and methodology for recovery of the necessary data; methods of analyses and interpretation; a schedule for completion of the various aspects of the investigations; the names and background of all key project personnel and consultants who will participate in the research; disposition of collections and field records; and any other necessary information deemed appropriate by the SHPO and other involved state and federal agencies or the Advisory Council on Historic Preservation.

4.3 Phase III Field Work/Excavation Guidelines

Data recovery should be as complete as possible. It should be tailored to the research questions established in the data recovery plan, and to whatever degree possible, to future archaeological research. The basic field work and excavation guidelines established for Phase I and Phase II investigations should be followed for any similar work undertaken in this phase. As a general rule, artifactual information should not be sacrificed for feature information and vice versa. Whenever possible, mechanized

stripping should be restricted to that portion of the site expected to be destroyed.

When preparing to undertake field work for a Phase III data recovery program an archaeologist must be prepared to provide the following: an explicit statement of the procedures used to collect the archaeological data; an explanation and justification of the methodology employed in data collection and recording; a discussion of the system for identifying and recording the spatial and contextual provenience of cultural material and other physical data; detailed descriptions of specialized procedures such as flotation, soil chemistry (pH, phosphates, etc.), and collection of radiocarbon samples; and any other relevant information as deemed appropriate by the reviewing agency.

Structural components such as depositional strata and cultural features identified during subsurface testing should be fully and accurately described and documented by acceptable means. Locations of all sampling and testing units should be recorded on project/site maps. Any important contextual relationships and associations between objects, cultural features, and environmental features should be described and explained.

Unless a site is to be completely destroyed, permanent reference points should be established at the site to facilitate relocation of excavation units and features.

4.4 Phase III Analysis and Report

The Phase III report is expected to be special in both content and format. The description, analysis, and interpretation of information collected should consider all forms of data collected. The reader should be given as complete and accurate an understanding of the site, its function, temporal and cultural affiliations, etc. as possible. All types of data analyzed (e.g. faunal, floral, geological or geomorphological, architectural, historical) should be integrated into site interpretation.

Any additions or modifications to the approved data recovery plan should be explained and justified. In addition, decisions made after field work has been completed as to whether or not to analyze all data collected should be addressed.

Excavation units and any other subsurface tests should be described in detail including stratigraphic profiles, soil conditions and characteristics; depths of deposits; and description and justification for excavation techniques. Depending on the nature and complexity of the site, it may be appropriate to discuss individual excavation units separately or to treat common deposits located in more than one unit together.

All laboratory procedures relevant to artifact and special sample processing, differential handling of certain classes of material, artifact identification and cataloging, and storage should be discussed.

Any previous applicable work should be incorporated into the analysis of the site. Examples of such work would include, but not

be restricted to local and regional work that is directly related to the site, culture(s), or time period(s) represented; related work in other geographic areas; theoretical or descriptive archaeological work; and any relevant research or information from other disciplines that have direct bearing on the analyses and interpretation of data collected at the site.

The report should include a discussion of contributions and potential contributions the Phase III investigations have made or could make to state, local, or national prehistory or history as appropriate. It may also be possible to discuss the study's contributions to broad anthropological and theoretical issues or to the State Plan if data generated during the investigations are suitable for such purposes.

Finally, the archaeologist should disseminate the information to the archaeological community and the lay public. An integral part of any data recovery should be publications, presentations at meetings and/or community programs, such as slide talks and exhibits.

4.5 Supplemental Phase III Investigations

If an approved Phase III data recovery plan does not result in the recovery of the physical evidence known to exist at a particular site and if the site will be destroyed, then all involved parties should strongly consider undertaking archaeological monitoring during the initial phases of construction or additional Phase III investigations which could possibly include mechanized site stripping. Archaeologically supervised stripping or site destruction under archaeological control can be a very effective means of evaluating the validity of a project field research design, particularly if the data recovery plan employs a sampling regime. It provides an means of assuring that data collected during the implementation of the data recovery plan are representative of the true nature of the archaeological site. Destruction under control may also be applicable to situations where looting of uncollected materials within the project impact zone may occur following the completion of data recovery. As previously noted, Phase III investigations are specifically designed to recover information contained in a significant archaeological site before all or part of it is destroyed. If deemed appropriate, this supplemental work should ensure that the goals of Phase III are satisfied before the site and its associated data are lost. Under no circumstances should such activities be undertaken on sites or portions of sites not subject to imminent destruction. Monitoring is not a substitute for an adequate Phase III investigation.

4.6 Disposition of Collections

Provision for the responsible curation of the archaeological collection (material remains and associated records) generated as a result of Phase III investigations at an acceptable repository is an integral part of any data recovery plan. Arrangements must be made in advance of any field work for the proper processing, documentation, and curation of collections as outlined in Standards for the Curation of Archaeological Collections (Section 7).

5.0 DISCOVERY OF HUMAN REMAINS

The discovery of human remains and items of cultural patrimony as defined by Section 3001 of the Native American Graves Protection and Repatriation Act (NAGPRA) in any phase of cultural resource investigations requires special consideration and care. Any discoveries of human remains on State lands must be reported to the State Museum. At all times human remains must be treated with the utmost dignity and respect. Should human burials be encountered, the location should immediately be secured and protected from damage and disturbance. Unless burial excavation is the purpose of or an explicit component of the approved research design, human remains should be left in-situ until consultation with the project sponsor, the SHPO, federally recognized Native American groups, concerned parties, and involved state and federal agencies has taken place. The excavation, study, and disposition of human remains should take place in accordance with all applicable federal, state, and local laws. The NYAC Policy on Human Remains (dated 1972, Appendix B) and Guidelines for Consideration of Traditional Cultural Values in Historic Preservation Review published by the President's Advisory Council on Historic Preservation can provide helpful guidance on the proper treatment of human remains.

6.0 STANDARDS FOR THE PRODUCTION OF CRM REPORTS

The following report guidelines summarize general content and suggested formats for any CRM report. It is understood that reports written for agencies that have their own specific report requirements should be written accordingly, but these reports should also include the information outlined in these standards. The National Park Service report format is also an appropriate model for reports.

These standards have not been designed to exclude categories of information not listed, nor to offer a rigid format for final reports. It is also important to note that reports are expected to pertain only to the level of research and analysis appropriate to the level of cultural resource investigation undertaken. In addition, these standards have been prepared under the assumption that CRM reports must fulfill the needs of the lead agency involved as well as those of any other reviewer. Finally, any report prepared in accordance with NYAC standards should include completed New York State Prehistoric or Historic Archaeological Site Forms and Building Structure Inventory forms where appropriate.

For the purposes of these guidelines, a "reviewer" is anyone who reads, examines, or studies the report for a lead agency, municipality, citizen group, university, or similar body in order to evaluate the cultural resource investigations completed, the results, and the recommendations.

Given the potential distribution of the CRM report, it is also important to provide information that will allow appropriate viewers the opportunity to make informed evaluations but at the same time protect the fragile archaeological/historical resource from potential dangers posed by unscrupulous individuals. As

such, some type of non-disclosure statement or method of site location protection within the report will be required.

6.1 Title Page

Each report should contain a title page that provides at least the following: the title of the report, including the level of investigation (e.g. Phase IA, IB, I, II, or III); the name and location of the minor civil subdivision (city/village/town, county, state) of the project; any pertinent project identification number (e.g. Highway PIN, Permit Number); author(s), contributor(s), project director(s), principal investigator(s); date report was prepared; name and address of the project sponsor for whom the report was prepared; and the organizational affiliation with address of the archaeological consultant.

6.2 Table of Contents

The table of contents should be arranged in a logical manner and should constitute a list of primary and secondary internal divisions of the report with their beginning page numbers. Lists of figures, tables, and plates (with page numbers) should immediately follow the list of section headings. They may be listed on separate pages if the lists are lengthy. It may also be appropriate to list authors of sections and subsections in the proper place within the table of contents.

A typical report table of contents may include the following: Management Summary; Introduction; Environmental/Physical Setting; Background Research and Sensitivity Assessment; Research Design; Field Methods and Procedures; Results; Summary, Conclusions, and Recommendations; References Cited; Acknowledgments; Appendixes; List of Figures; List of Tables; and List of Photographs/Plates.

6.3 Management Summary

The management summary, like an abstract, should serve as a brief, clear outline of the proposed project, the investigations, results, and recommendations. It is often used by non-archaeologists and should be written with this category of reader as well as any agency reviewer in mind.

The management summary should include sections outlining the following: project location, project description, project size, regulatory and/or lead agency, landform/environment, work completed, problems encountered, results, and conclusions and recommendations.

6.4 Introduction

The introduction should outline and summarize all pertinent sections of the report and should include at least the following:

- (1) The names of the project sponsor and the contact person; the date on which the consultant was contacted to perform the work; the date on which the parties contracted to perform the investigations; contract numbers and permit/project numbers; legislation relevant to the work

(2) A written description of the proposed project including the nature of the construction or land alteration, geographic limits of the project areas, potential impacts, and project alternatives, if any are known

(3) The purpose of the investigations, discussion of the scope of work, and the report format

(4) The composition of the research staff and the dates of investigation

(5) The temporary and permanent repositories of field data, artifacts, and other important project materials

(6) Sufficient maps and illustrations to identify the project location including, but not necessarily restricted to, the location of the project within the state and county, the location of the project area on a named USGS 7.5' topographic map or DOT map, and a project area map

6.5 Environmental/Physical Setting

This section of the report should summarize the environmental factors relating to actual and potential cultural resources, including archaeological sites, landscapes and extant structures, within or adjacent to the project area. This information is necessary for both developing research methods and for evaluating project impact. Minimally, the following should be included, with accompanying maps where appropriate; geology, soils, hydrology, physiography/geomorphology, climate, flora, fauna, and recent human/natural disturbance.

6.6 Background Research and Sensitivity Assessment

The section summarizing the background research and sensitivity assessment should be written in such a manner as to assist reviewers in understanding and evaluating the importance of archaeological resources in the project area as well as the rationale for any further research recommended. The following general guidelines apply for reporting the results of the background literature search and sensitivity assessment: specify the steps taken in obtaining information; cite all sources including oral testimony, and provide full references in the report; explain omissions and lack of cultural activity where pertinent to the conclusions of the sensitivity assessment; provide a summary of the cultural background and environmental attributes and limitations of the area; review information on known archaeological and other cultural resources and previous studies in the area; include information on the foci and extent of previous coverage of the area and the research questions addressed; and specify where all records resulting from the background research will be curated. DO NOT provide specific site locations in reports for public distribution;

6.6.1 Background Research

Summaries of the following should be covered under Background Research: site file searches at the state and local levels; archaeological literature search, including both published and unpublished sources; examination of historic maps and archival information; searches of State and National Register files at

SHPO, specifying SRHP/NRHP-listed, SRHP/NRHP-eligible, and SRHP/NRHP-inventoried sites; informant interviews; examination of institutional and private artifact collections; consultation with other professional archaeologists, locally active historians, and municipal authorities; field visit(s); the person(s) involved, the date of the visit, and the observations made.

A table listing the known cultural resources within a one-mile radius of project area should be included in the report with maps (see above *re* reports for public distribution) and photographs where appropriate.

6.6.2 Sensitivity Assessments

Summaries of the following should be covered under Sensitivity Assessment: the sensitivity rating expressed as low, moderate, high, or mixed, that reflects the likelihood that cultural resources are present within the project area; definition of the rating system used and its implications for further research; discussion of the types and conditions of cultural resources likely to be found within the project area; rationale for assigning the sensitivity rating; and relevant environmental and/or historic contexts such as those in SHPO's list developed for state-wide planning (see Section 2.2.2).

6.7 Research Design

The research design should reflect a knowledge of the existing database and research questions considered important at least at the local and regional levels. The degree of complexity or detail should be appropriate to the level of investigations undertaken. This section of the report should include the following: an identification of the theoretical goals as stated in the form of specific hypotheses to be tested or problems to be investigated; the identification of the relevant analytical variables; specification of the data necessary for empirical testing; specification and justification of the methods and techniques for collecting and studying the data; and discussion of possible outcomes of the analyses.

6.8 Field Methods and Procedures

This section of a Phase I report should include discussions of the following: walkover survey strategies designed to determine the presence of visible foundations, artifact scatters, disturbed ground, excessive slope, etc.; the type and size of excavation/collection unit used to locate resources and the reasons for this selection (e.g. shovel-test units for artifact recovery, larger units for surface collections, trenches for identifying buried historic foundations or deeply buried prehistoric sites); testing interval and design (e.g. single transect, regular grid, staggered grid) and rationale for this selection; when plowing and collecting, the length and interval between furrows, whether cultural material was piece-plotted or collected in systematically placed units, type of weather and ground conditions (e.g. cloudy vs. bright sun, dry vs. moist soil, adequacy of potential artifact visibility); excavation and artifact recovery techniques (e.g. shovel vs. machine excavation, natural vs. arbitrary layers/levels, depth to sterile soil, remote sensing methods, soil stripping strategies) and rationale; average depth of test units; typical soil profiles; the size of screen mesh; the adequacy of horizontal and vertical survey coverage; areas not surveyed and

reasons why; and the potential biases in results (if any) from gaps in coverage.

This section of a Phase II report should, in addition, include discussions of the following: the type and size of excavation/collection units used during the site examination; the field sampling strategy and rationale for its selection; the excavation/collection techniques and how these relate to the data expected; and any impediments to the site examination that may have influenced the results.

This section of a Phase III report should, in addition, include discussions of the following: explanation of and justifications for the data recovery field strategy and methods; the treatment and analysis of floral, faunal, or other organic matter recovered; and all laboratory procedures relating to the stabilization, labelling, cataloging, and storage of artifacts and records, including the curation facility.

6.9 Results

The results section of a report should clearly outline in the text and on maps the project boundaries, testing strategies, and cultural resources identified during testing. Depending upon the specific nature of the project and the investigations undertaken, it may be the site(s), standing structures, single test units, or single artifacts recovered from a plowed field that serve as the primary unit of discussion. Descriptions may be organized by starting at one end of a project area and moving to the other or by grouping similar resources together (e.g. all prehistoric resources separate from historic resources and standing structures).

6.9.1 Components of a Phase I Report

Key components of this section of the text for a Phase I report should include the following: project size; the number of and intervals between shovel test units (with the shovel-test unit records included as an appendix); the number of tests actually excavated; the number of units, if any, that produced cultural material; the numbers and types of artifacts recovered and their cultural affiliation, if known (with the artifact list/catalog included as an appendix); the nature of the artifact distribution (e.g. clusters of artifacts, uniform scatter, random distribution, features); physiographic context of the artifacts (e.g. floodplain, terrace, swamp, lake); stratigraphic context of the artifacts (e.g. surface, plowzone, buried); lists of all standing structures that are at least 50 years old as well as structures that are less than 50 years old and are exempt from Office of Parks, Recreation and Historic Preservation (OPRHP) guidelines; site and structure inventory forms for all prehistoric and historic archaeological sites and standing structures that are at least 50 years old; and a master project map that details the testing strategy and results.

6.9.2 Components of a Phase II Report

Key components of this section of the text for a Phase II report should include the following: the number of each type of excavation unit used in the site examination including detailed descriptions of typical and unusual profiles of excavation units; the

range of artifact types recovered from testing (with the artifact catalog included as an appendix); the average density of material per unit as well as other summary statistics that help describe the site; the estimated site size and the proportion of the site contained within the project boundaries; the size of the area actually excavated (total sq m); the nature of the vertical stratification of the site (e.g. site contained within the plowzone, sub-plowzone, layered in the sub-plowzone); any internal clustering within the site; the types of features present (with photographs, floor plans, and profiles included as appropriate); temporal associations of the sites based on diagnostic artifacts or radiocarbon dating if available; summaries of floral, faunal, and other specialized analyses; summaries of functional, technological, and stylistic analyses of specific artifact groups; interpretations of site function; interpretations of the place of the site within a larger temporal, regional, or theoretical context; and research potential of the site.

6.9.3 Components of a Phase III Report

Key components of this section of the text for a Phase III report should include the following: complete artifact inventories integrating all phases of investigation; results of artifact analyses; results of all floral, faunal, and radiocarbon analyses; integration and interpretation of the results of all tests and analyses; the application of these integrated results to the research questions and goals of the study as made explicit in the research design; all pertinent plans and sections of excavation units and features encountered; and any biases or extraneous factors that may have affected the outcome of the excavations and analyses. All Phase III report photographs, tables, maps, and other graphics should be of publishable quality and follow National Park Service guidelines.

6.9.4 Project Map Specifications

Project maps should include the following: an outline of the project boundaries in reference to fixed features such as roadways, power lines, rivers, canals, and railroads; the locations of all important features within the project boundaries such as standing structures, ditches, and disturbed areas; the locations of all test units actually excavated or collected differentiated according to those that contained artifacts and those that did not; the locations of all suspected artifact clusters and features such as foundations, wells, and middens; the identifications of all structures that are at least 50 years old or other important standing structures in the project area; numbered photo angles of all photographs included in the text; a title block identifying the project name, location, date of investigation, and contractor performing the survey; key to all symbols used on the map; a bar scale using both English and metric measurements; and a north arrow (specify whether grid, magnetic, or geographic).

Maps accompanying a Phase II report should, in addition to the information listed for project maps, include the following: estimates of site boundaries; detailed maps of all individual site excavations; site locations labelled with site name and number; locations of features and any radiocarbon dated samples. Maps accompanying a Phase III report should also include the locations of all excavation units, backhoe trenches, and areas of machine stripping.

6.10 Summary, Conclusions, and Recommendations

The final section of an archaeological survey report should serve as a stand-alone summary of the activities and findings reported in detail in the body of the report.

6.10.1 Components of a Phase I Report

For a Phase I report, this section should summarize the scope, methodology, areal coverage, and findings of the investigations; identify any areas where archaeological materials were discovered; point out gaps in survey coverage or areas where weather, owner-access refusal, or other conditions prevented or necessitated less than thorough investigations; indicate the institutional repository for artifacts, field notes, and records for the project; evaluate the results of the investigations in terms of the project's theoretical orientation, bias, and assumptions identified in the research design; compare the results of the investigations to those of others conducted in the area; place the study within a regional context in terms of its contribution to regional knowledge and the degree to which its results reflect what is known of the area; assess the project impact; explain the need for and general scope of additional work, if any; make and justify recommendations for project modifications to protect sites if accurate site boundaries can be established; and consider secondary effects of the project as well as the direct impacts (e.g. housing development resulting from road, sewer, or waterline construction or site isolation resulting from gravel mining).

6.10.2 Components of a Phase II Report

For a Phase II report, this section should summarize the arguments regarding the significance or non-significance of the resources investigated; state whether or not sufficient information has been collected to address the criteria for eligibility for listing on the State or National Registers of Historic Places such as information pertinent to the integrity, research potential, and the adequacy of horizontal and vertical boundary information; and present possible options for the treatment of any resources considered significant (e.g. avoidance through redesign, protective conditions, and/or data recovery) along with specific recommendations as to how these might be implemented.

6.10.3 Components of a Phase III Report

For a Phase III report this section should include summaries of the research design and of the recovery, analysis, and interpretation of information collected during the data recovery program; an evaluation of the success of the data recovery plan and any modifications made to it; an interpretation of data recovered from the site(s) and their importance in relation to the relevant historic context(s) established for the region; a discussion of contributions the Phase III investigations have made to the current state of knowledge of prehistory or history and the state plan; recommendations for updating or revising research questions, goals, and preservation priorities in the state historic preservation plan; recommendations for supplemental Phase III investigations, if appropriate (Section 4.5); recommendations for the conservation, short-term, and long-term curation of the collection; and finally, recommendations for dissemination of all appropriate

information to the archaeological community and public outreach programs.

6.11 References Cited

Every effort should be made to insure that this part of the report is complete and accurate. We urge the consistent adoption of the American Antiquity format and refer readers to its most recently published style guide.

7.0 STANDARDS FOR THE CURATION OF ARCHAEOLOGICAL COLLECTIONS¹

7.1. Definitions

For the purposes of these standards, the following definitions apply:

7.1.1. Collection means material remains that are excavated or removed during a survey, excavation or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation, or other study.

7.1.2. Material remains means artifacts, objects, specimens and other physical evidence that are excavated or removed in connection with efforts to locate, evaluate, document, study, preserve or recover a prehistoric or historic resource. Classes of material remains (and illustrative examples) that may be in a collection include, but are not limited to:

- (A) Components of structures and features (such as houses, mills, piers, fortifications, raceways, earthworks, and mounds);
- (B) Intact or fragmentary artifacts of human manufacture (such as tools, weapons, pottery, basketry, and textiles);
- (C) Intact or fragmentary natural objects used by humans (such as rock crystals, feathers, and pigments);
- (D) By-products, waste products or debris resulting from the manufacture or use of man-made or natural materials (such as slag, dumps, cores, and debitage);
- (E) Organic material (such as vegetable and animal remains, and coprolites);
- (F) Human remains (such as bone, teeth, mummified flesh, burials, and cremations);
- (G) Components of petroglyphs, pictographs, intaglios or other works of artistic or symbolic representation;
- (H) Components of shipwrecks (such as pieces of the ship's hull, rigging, armaments, apparel, tackle, contents, and cargo);
- (I) Environmental and chronometric specimens (such as pollen, seeds, wood, shell, bone, charcoal, tree core samples, soil, sediment cores, obsidian, volcanic ash, and baked clay); and
- (J) Paleontological specimens that are found in direct physical relationship with a prehistoric or historic resource.

¹ Adapted from Department of the Interior, National Park Service 356 CFR Part 79 and the Standards of Research Performance of the Society of Professional Archaeologists.

7.1.3. Associated records means original records (or copies thereof) that are prepared, assembled and document efforts to locate, evaluate, record, study, preserve, or recover a prehistoric or historic resource. Some records such as field notes, artifact inventories, and oral histories may be originals that are prepared as a result of the field work, analysis, and report preparation. Other records such as deeds, survey plats, historical maps and diaries may be copies of original public or archival documents that are assembled and studied as a result of historical research. Classes of associated records (and illustrative examples) that may be in a collection include, but are not limited to:

- (A) Records relating to the identification, evaluation, documentation, study, preservation or recovery of a resource (such as site forms, field notes, drawings, maps, photographs, slides, negatives, films, video and audio cassette tapes, oral histories, artifact inventories, laboratory reports, computer cards and tapes, computer disks and diskettes, printouts of computerized data, manuscripts, reports, and accession, catalog, and inventory records);
- (B) Records relating to the identification of a resource using remote sensing methods and equipment (such as satellite and aerial photography and imagery, side scan sonar, magnetometers, subbottom profilers, radar, and fathometers);
- (C) Public records essential to understanding the resource (such as deeds, survey plats, military and census records, birth, marriage and death certificates, immigration and naturalization papers, tax forms, and reports);
- (D) Archival records essential to understanding the resource (such as historical maps, drawings and photographs, manuscripts, architectural and landscape plans, correspondence, diaries, ledgers, catalogs, and receipts); and
- (E) Administrative records relating to the survey excavation or other study of the resource (such as scopes of work, requests for proposals, research proposals, contracts, antiquities permits, reports, documents relating to compliance with Section 106 of the National Historic Preservation Act [16 U.S.C. 47f], and National Register of Historic Places nomination and determination of eligibility forms).

7.1.4 Curatorial services means providing curatorial services means managing and preserving a collection according to professional museum and archival practices, including but not limited to:

- (A) Inventorying, accessioning, labeling, and cataloging a collection;
- (B) Identifying, evaluating, and documenting a collection;
- (C) Storing and maintaining a collection using appropriate methods and containers, and under appropriate environmental conditions and physically secure controls;
- (D) Periodically inspecting a collection and taking actions as may be necessary to preserve it;
- (E) Providing access and facilities to study a collection; and
- (F) Handling, cleaning, stabilizing, and conserving a collection in such a manner to preserve it.

7.1.5 Qualified museum professional means a person who possesses training, knowledge, experience, and demonstrable competence in museum methods and techniques appropriate to the nature and content of the collection under the person's management and care, and commensurate with the person's duties and responsibilities. In general, a graduate degree in museum science or subject matter applicable to archaeology, or equivalent training and experience, and three years of professional experience are required for museum positions that demand independent professional responsibility as well as subject specialization (archaeology) and scholarship. Standards that may be used, as appropriate, for classifying positions and for evaluating a person's qualifications include, but are not limited to, the following federal guidelines:

(A) The Office of Personnel Management's "Position Classification Standards for Positions under the General Schedule Classification System" (U.S. Government Printing Office, stock No. 906-028-00000-0, 1981) are used by Federal agencies to determine appropriate occupational series and grade levels for positions in the Federal service. Occupational series most commonly associated with museum work are the museum curator series (GS/GM-1015) and the museum technician and specialist series (GS/GM-1016). Other scientific and professional series that may have collateral museum duties include, but are not limited to, the archivist series (GS/GM-1420), the archeologist series (GS/GM-193), the anthropologist series (GS/GM-190), and the historian series (GS/GM-170). In general, grades GS-9 and below are assistants and trainees while grades GS-11 and above are determined according to the level of independent professional responsibility, degree of specialization and scholarship, and the nature, variety, complexity, type, and scope of the work.

(B) The Office of Personnel Management's "Qualification Standards for Positions under the General Schedule (Handbook X-118)" (U.S. Government Printing Office, stock No. 906-030-00000-4, 1986) establish educational, experience and training requirements for employment with the Federal Government under the various occupational series. A graduate degree in museum science or applicable subject matter, or equivalent training and experience, and three years of professional experience are required for museum positions at grades GS-11 and above.

(C) The "Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" (48 FR 44716, Sept. 29, 1983) provide technical advice about archeological and historic preservation activities and methods for use by Federal, State and local Governments and others. One section presents qualification standards for a number of historic preservation professions. While no standards are presented for collections managers, museum curators or technicians, standards are presented for other professions (i.e. historians, archeologists, architectural historians, architects, and historic architects) that may have collateral museum duties.

7.2 Responsibilities of the Archaeologist

1. If material remains are collected as a result of a survey, excavation, or other study of a prehistoric or historic resource, a system for identifying and recording their proveniences must be maintained.

2. All associated records from an archaeological project should be intelligible to other archaeologists. If terms lacking commonly held referents are used, they should be clearly defined.

3. During accessioning, analysis, and storage of the material remains and associated records in the laboratory, the archaeologist must take precautions to ensure that correlations between the material remains and the associated records are maintained, so that provenience, contextual relationships, and the like are not confused or obscured.

4. The archaeologist must ensure that a collection resulting from a project will be deposited at a repository that can provide curatorial services, that employs at least one qualified professional with experience in collections management/curatorship.

5. The initial processing of the material remains (including appropriate cleaning, sorting, labeling, cataloging, stabilizing, and packaging) must be completed, and associated records prepared and organized in accordance with the repository's processing and documentation procedures.

6. A professional archaeologist should refuse to participate in any research which does not comply with the above criteria.

7.3 Guidelines for Selecting a Repository

1. When possible, collections from New York should be deposited in a repository that:

- (i) is in the State;
- (ii) stores and maintains other collections from the same site or project location; or
- (iii) houses collections from a similar geographic region or cultural area.

2. The collection should not be subdivided and stored at more than a single repository unless such subdivision is necessary to meet special storage, conservation, or research needs.

3. Material remains and associated records should be deposited in the same repository to maintain the integrity and research value of the collection.

7.4 Criteria for Institutions Serving as Repositories for Archaeological Collections

1. The institution must be chartered as a museum by the Board of Regents of the State of New York or similar body, or be an institution of higher education recognized by the State of New York.

2. The repository must certify, in writing, that the collection shall be cared for, maintained, and made accessible in accordance with the standards in this part.

3. The repository must be able to provide adequate, long-term curatorial services including:

- (A) Accessioning, labelling, cataloging, storing, maintaining, inventorying and conserving the particular collection on a long-term basis using professional museum and archival practices; and
- (B) Comply with the following, as appropriate to the nature and content of the collection;

(1) Maintain complete and accurate records of the collection, including:

- (a) records on acquisitions;
- (b) catalog and artifact inventory lists;
- (c) descriptive information, including field notes, site

forms, and reports;

(d) photographs, negatives, and slides;

(e) locational information, including maps;

(f) information on the condition of the collection, including any completed conservation treatments;

(g) approved loans and other uses;

(h) inventory and inspection records, including any environmental monitoring records;

(i) records on any deaccessions and subsequent transfers, repatriations, or discards;

(2) Dedicating the requisite facilities, equipment, and space in the physical plant to properly store, study, and conserve the collection. Space used for storage, study, conservation, and, if exhibited, any exhibition must not be used for non-curatorial purposes that would endanger or damage the collection;

(3) Keeping the collection under physically secure conditions with storage, laboratory, study, and any exhibition areas by

(a) having the physical plant meet local electrical, fire, building, health and safety codes;

(b) having an appropriate and operational fire detection and suppression system;

(c) having an appropriate and operational intrusion detection and deterrent system;

(d) having an adequate emergency management plan that establishes procedures for responding to fires, floods, natural disasters, civil unrest, acts of violence, structural failures, and failures of mechanical systems within the physical plant;

(e) providing fragile or valuable items in a collection with additional security such as locking the items in a safe, vault or museum specimen cabinet, as appropriate;

(f) limiting and controlling access to keys, the collection, and the physical plant; and

(g) periodically inspecting the physical plant for possible security weaknesses and environmental control problems, and taking necessary actions to maintain the integrity of the collection;

(4) Requiring staff and any consultants who are responsible for managing and preserving the collection, and for conducting inspections and inventories as described in sections 3.(B)(7) and 3.(B)(8), to be either qualified museum professionals or professional archaeologists guided by a professional museum conservation consultant;

(5) Handling, storing, cleaning, conserving and, if exhibited, exhibiting the collection in a manner that

(a) is appropriate to the nature of the material remains and associated records;

(b) protects them from breakage and possible deterioration from adverse temperature and relative humidity, visible light, ultraviolet radiation, dust, soot, gases, mold, fungus, insects, rodents, and general neglect; and

(c) preserves data that may be studied in future laboratory analyses. when material remains in a collection are to be treated with chemical solutions or preservatives that will permanently alter the

remains, when possible, retain untreated representative samples of each affected artifact type, environmental specimen or other category of material remains to be treated. untreated samples should not be stabilized or conserved beyond dry brushing;

(6) Storing site forms, field notes, artifacts, inventory lists, computer disks and tapes, catalog forms, and a copy of the final report in a manner that will protect them from theft and fire such as

(a) storing the records in an appropriate insulated, fire resistant, locking cabinet, safe, vault or other container, or in a location with a fire suppression system;

(b) storing a duplicate set of records in a separate location; or

(c) ensuring that records are maintained and accessible through another party. For example, copies of final reports and site forms frequently are maintained by the State Historic Preservation Officer, the State Archeologist or the State Museum or university. The Tribal Historic Preservation Officer and Indian tribal museum ordinarily maintain records on collections recovered from sites located on Indian lands. The National Technical Information Service and the Defense Technical Information Service maintain copies of final reports that have been deposited by Federal agencies. The National Archeological Database maintains summary information on archeological reports and projects, including information on the location of those reports.

(7) Periodically inspecting the collection or having a professional conservation assessment done regularly for the collection for the purposes of assessing the condition of the material remains and associated records, and monitoring those remains and records for possible deterioration and damage; and performing only those actions as are absolutely necessary to stabilize the collection and rid it of any agents of deterioration.

(a) Material remains and records of a fragile or perishable nature should be inspected for deterioration and damage on a more frequent basis than lithic or more stable remains or records.

(b) Because frequent handling will accelerate the breakdown of fragile materials, material remains and records should be viewed but handled as little as possible during inspections.

(8) Periodically inventorying the collection by accession, lot, or catalog record for the purpose of verifying the location of the material remains and associated records

(a) Material remains and records of a valuable nature should be inventoried on a more frequent basis than other less valuable remains or records.

(b) Because frequent handling will accelerate the breakdown of fragile materials, material remains and records should be viewed but handled as little as

possible during inventories.

(9) Providing access to the collection for scientific, educational, and religious uses, subject to such terms and conditions as are necessary to protect and preserve the condition, research potential, religious or sacred importance, and uniqueness of the collection, such as

(a) Scientific and educational uses. A collection shall be made available to qualified professionals for study, loan and use for such purposes as in-house and traveling exhibits, teaching, public interpretation, scientific analysis, and scholarly research. Qualified professionals would include, but not be limited to, curators, conservators, collection managers, exhibitors, researchers, scholars, archaeological contractors, and educators. Students may use a collection when under the direction of a qualified professional.

(b) Religious uses. Religious remains in a collection shall be made available to persons for use in religious rituals or spiritual activities. Religious remains generally are of interest to medicine men and women, and other religious practitioners and persons from Indian tribes, and other indigenous and immigrant ethnic, social, and religious groups that have aboriginal or historic ties to the lands from which the remains are recovered, and have traditionally used the remains or class of remains in religious rituals or spiritual activities.

(c) The repository shall not allow uses that would alter, damage, or destroy an object in a collection unless the repository determines that such use is necessary for scientific studies or public interpretation, and the potential gain in scientific or interpretive information outweighs the potential loss of the object. When possible, such use should be limited to unprovenienced, non-unique, non-fragile objects, or to a sample of objects drawn from a larger collection of similar objects.

(d) No collection (or part thereof) shall be loaned to any person without a written agreement between the repository and the borrower that specifies the terms and conditions of the loan. At a minimum, a loan agreement shall specify

(1) the collection or object being loaned;

(2) the purpose of the loan;

(3) the length of the loan;

(4) any restrictions on scientific, educational or religious uses, including whether any object may be altered, damaged or destroyed;

(5) except as provided in section 2(9)(c), the stipulation that the borrower shall handle the collection or object being borrowed during the term of the loan so as not to damage or reduce its scientific, educational, religious, or cultural value; and

(6) any requirements for insuring the object

or collection being borrowed for any loss, damage or destruction during transit and while in the borrower's possession.

(e) The repository shall maintain administrative records that document approved scientific, educational, and religious uses of the collection.

Appendix A

FEDERAL LAWS, REGULATIONS AND GUIDELINES

National Historic Preservation Act of 1966, as amended.

36 CFR Part 800 Protection of Historic Properties

36 CFR Part 60 National Register of Historic Places

36 CFR Part 61 Procedures for Approved State and Local Government Historic Preservation Programs

36 CFR Part 79 Curation of Federally Owned and Administered Archaeological Collections

Archaeology and Historic Preservation: Secretary of Interior's Standards and Guidelines

Department of Transportation Act of 1966

National Environmental Policy Act of 1969

Archaeology and Historic Preservation Act of 1974

Archaeological Resource Protection Act of 1979

43 CFR Part 7 Protection of Archaeological Resources: Uniform Regulations

Abandoned Shipwreck Act of 1987

Abandoned Shipwreck Act Guidelines

Native American Grave and Repatriation Act of 1990

NEW YORK STATE LAWS AND REGULATIONS

State Historic Preservation Act - Article 14 of Parks, Recreation and Historic Preservation Law

9 NYCRR Part 426 Authority and Purpose

9 NYCRR Part 427 State Register of Historic Places

9 NYCRR Part 428 State Agency Activities Affecting Historic and Cultural Properties

State Environmental Quality Review Act - Article 8 of Environmental Conservation Law

6 NYCRR Part 617 State Environmental Quality Review

The SEQR Handbook (1992 edition)

PERTINENT GUIDANCE DOCUMENTS AND "HOW TO" MATERIALS

Advisory Council on Historic Preservation

The Treatment of Archaeological Properties

Section 106 Step-by-Step

U. S. Department of the Interior

Technical Brief No. 11 Legal Background of Archaeological Resource Protection

National Register Bulletins

#12 Definition of National Register Boundaries for Archaeological Properties

#15 How to Apply the National Register Criteria for Evaluation

#16A How to Complete National Register Registration Forms

#16B How to Complete National Register Multiple Property Documentation Form

#29 Guidelines for Restricting Information About Historic and Prehistoric Resources

#36 Evaluating and Registering Historical Archaeology Sites and Districts

#38 Guidelines for Evaluating and Documenting Traditional Cultural Properties

#41 Guidelines for Evaluating and Registering Cemeteries and Burial Places

#43 Defining Boundaries for National Register Properties

To obtain copies and or updated versions of the above documents, please address your request to the relevant agencies listed below.

Advisory Council On Historic Preservation

1100 Pennsylvania Avenue, NW, Suite 809

Washington, DC 20004

National Register of Historic Places

National Park Service

U.S. Dept. of Interior

P.O. Box 37127

Washington, DC 20013-7127

Archaeological Assistance Division

National Park Service

U.S. Dept. of Interior

P.O. Box 37127

Washington, DC 20013-7127

New York State Office of Parks, Recreation and Historic Preservation

Historic Preservation Field Services Bureau

Peebles Island

P.O. Box 189

Waterford, NY 12188-0189

Phone 518-237-8643

New York State Museum

Anthropological Survey

Cultural Education Center

Empire State Plaza

Albany, NY 12230

New York State Department of Environmental Conservation

50 Wolf Road

Albany NY 12233

Appendix B
NYAC BURIAL RESOLUTION
15 September 1972

Whereas, the Native Americans of New York State regard the disturbance of their burials in the ground as disrespectful to their dead; and

Whereas, the New York Archaeological Council, the representatives of the majority of the professional archaeologists working in New York State recognizes that the same legal and ethical treatment should be accorded all human burials irrespective of racial or ethnic origins; and

Whereas, NYAC recognizes that despite our position the disturbance of burials by others is and will be a reality; therefore,

Resolved,

1) That the New York Archaeological Council urges a moratorium on planned burial excavation of Indian skeletons in New York State until such time as public opinion regards the recovery of skeletal data as a scientific endeavor irrespective of racial or ethnic identity,

2) That we oppose the excavation of burials for teaching purposes as pedagogically unnecessary and scientifically destructive,

3) That we agree in the future to reburial of Indian skeletons in a manner and at a time prescribed by the Native Americans whenever burials are chance encounters during archaeological excavations or other earth moving activities,

4) That we request the opportunity to study these skeletons for their scientific and historic significance before reburial, and

5) That when a burial ground is being disturbed by untrained individuals, a committee of local Native Americans and archaeologists should jointly plan the salvage of information and the preservation of remains.

Appendix C
NYAC CODE OF ETHICS AND PRACTICE

Archaeology is a profession, and the privilege of professional practice requires professional morality and professional responsibility, as well as professional competence, on the part of each practitioner.

A. The Archaeologist's Responsibility to the Public:

(1) An archaeologist shall:

- a. recognize a commitment to present archaeology and its research results to the public in a responsible manner;
- b. actively support conservation of the archaeological resource base;
- c. be sensitive to, and respect the legitimate concerns of, groups whose culture histories are the subjects of archaeological investigations;
- d. avoid and discourage exaggerated, misleading, or unwarranted statements about archaeological matters that might induce others to engage in unethical or

illegal activity;

e. support and comply with the terms of the UNESCO Convention on the means of prohibiting and preventing the illicit import, export, and transfer of ownership of cultural property.

(2) An archaeologist shall not:

a. engage in any illegal or unethical conduct involving archaeological matters or knowingly permit the use of her/his name in support of any illegal or unethical activity involving archaeological matters;

b. give a professional opinion, make a public report, or give legal testimony involving archaeological matters without being as thoroughly informed as might reasonably be expected;

c. engage in conduct involving dishonesty, fraud, deceit, or misrepresentation about archaeological matters;

d. undertake any research that affects the archaeological resource base for which she/he is not qualified.

B. The Archaeologist's Responsibility to Her/His Colleagues:

(1) An archaeologist shall:

a. give appropriate credit for work done by others;

b. keep informed and knowledgeable about developments in her/his field or fields of specialization;

c. accurately, and without undue delay, prepare and properly disseminate a description of research done and its results;

d. communicate and cooperate with colleagues having common professional interests;

e. give due respect to colleagues' interest in, and right to, inform about, sites, areas, collections, or data where there is a mutual active or potentially active research concern;

f. know and comply with all laws applicable to her/his archaeological research, as well as with any relevant procedures promulgated by duly constituted professional organizations;

g. report knowledge of violations of this Code to proper authorities.

(2) An archaeologist shall not:

a. falsely or maliciously attempt to injure the reputation of another archaeologist;

b. commit plagiarism in oral or written communication;

c. undertake research that affects the archaeological resource base unless reasonably prompt, appropriate analysis and reporting can be expected;

d. refuse a reasonable request from a qualified colleague for research data.

C. The Archaeologist's Responsibility to Employers and Clients:

(1) An archaeologist shall:

- a. respect the interests of her/his employer or client, so far as is consistent with the public welfare and this Code of Standards;
- b. refuse to comply with any request or demand of an employer or client which conflicts with the Code or Standards;
- c. recommend to employers or clients the employment of other archaeological or other expert consultants upon encountered archaeological problems beyond her/his competence;
- d. exercise reasonable care to prevent her/his employees, colleagues, associates and others whose services are utilized by her/him from revealing or using confidential information. Confidential information means information of a non-archaeological nature gained in the course of employment which the employer or client has requested be held inviolate, or the disclosure of which would be embarrassing or would be likely to be detrimental to the employer or client. Information ceases to be confidential when the employer or client so indicates or when such information becomes publicly known.

(2) An archaeologist shall not:

- a. reveal confidential information, unless required by law;
- b. use confidential information to the disadvantage of the client or employer; or
- c. use confidential information for the advantage of herself/himself or a third person, unless the client consents after full disclosure;
- d. accept compensation or anything of value for recommending the employment of another archaeologist or other person, unless such compensation or thing of value is fully disclosed to the potential employer or client;
- e. recommend or participate in any research which does not comply with the requirements of the SOPA Standards of Research Performance

Appendix D GLOSSARY

Adverse impact: A damaging change to the quality of the cultural resource's significant characteristics. An adverse impact will result in the loss of important information.

Archaeological resources: The subsurface remains of buildings, fireplaces, storage pits, habitation areas, and other features of past human activity. Investigating archaeological resources requires the use of a specialized set of techniques and methods for extracting the maximum information from the ground. Archaeological resources can be either prehistoric or historic in origin.

Archaeological sites: One type of cultural resource, unique in that they are the only way to learn about people who kept no written records. They also can be used to confirm, correct, and expand

upon the written records left by our ancestors.

Archaeology: A set of methods and techniques designed to recover important information about the life-ways of past peoples and cultures from the remains they left in the ground.

Artifact: See Material remains.

Collection: Any material remains that are excavated or removed during a survey, excavation or other study of a prehistoric or historic resource, and associated records that are prepared or assembled in connection with the survey, excavation, or other study.

Cultural resources: The collective evidence of the past activities and accomplishments of people. They include buildings, objects, features, locations, and structures with scientific, historic, and cultural value.

Extant resources: Buildings or structures which are still standing in much the same form as when they were first constructed. Historic houses, bridges, and farmsteads are examples.

Feature: Intact evidence of cultural activity, typically in the form of hearths, pits, cisterns, privies, wells, postmolds, or other intentional, permanent alterations of the ground surface.

Historic property: Any building, structure, object, district, place, site, or area significant in the history, architecture, archaeology, or culture of the State of New York, its communities, or the Nation.

Impact: Any change, whether good or bad, in the quality of a cultural resource's significant historic, architectural, or archaeological characteristics.

Impact mitigation: A course of action which lessens the harm that will be inflicted upon a cultural resource. It may include work restrictions, repair, restoration, documentation, the installation of a protective covering, or the planned removal of a resource. In the case of archaeological sites, the latter typically involves full-scale excavations.

Material remains: Objects, specimens and other physical evidence that are excavated or removed in connection with efforts to locate, evaluate, document, study, preserve or recover a prehistoric or historic resource.

National Register of Historic Places: The nation's official list of historic, architectural, archaeological, and cultural resources worthy of preservation. The Register contains individual sites and historic districts of national, state, or local significance. The Register is maintained by the United States Department of the Interior.

NYAC: New York Archaeological Council, a not-for-profit association of professional archaeologists with an interest in New York State archaeology.

Prehistoric/historic resources: Prehistoric resources date to the time before written records for a specific area, while historic resources are those dating to the time of written records. In North America, the time of written records began about A.D. 1500 with the arrival of European explorers. However, some parts of the country were not visited by outsiders until much later.

Reviewer: Anyone who reads, examines, or studies the report for a lead agency, municipality, citizen group, university, or similar body in order to evaluate the cultural resource investigations completed, the results, and the recommendations.

SHPO: State Historic Preservation Officer, who is an appointed official responsible for administering the National Historic Preservation Act (NHPA) within a state government or jurisdiction.

Significant property: A cultural resource that meets the criteria of the State or National Register of Historic Places.

APPENDIX E: Section 233 of the New York State Education Law

EDUCATION LAW

§ 233. State Museum; collections made by the staff

1. All scientific specimens and collections, works of art, objects of historic interest and similar property appropriate to a general museum, if owned by the state and not placed in other custody by a specific law, shall constitute the collections of the state museum. The state museum shall be the custodian of the collections, shall perform standard curatorial, research and educational activities and a director appointed by the regents shall constitute its head.

2. Any scientific collection made by a member of the museum staff during his term of office shall, unless otherwise authorized by resolution of the regents, belong to the state and form a part of the state museum.

3. The state of New York, through its legislative authority accepts the provisions of section one hundred twenty of the federal-aid highway act of nineteen hundred fifty-six¹ (70 Stat. 374) relating to the salvage of archaeological and paleontological objects, including ruins, sites, Indian burial grounds, buildings, artifacts, fossils or other objects of antiquity having national significance from an historical or scientific standpoint, and empowers and directs the commissioner of education to make agreements with appropriate state departments or agencies and such agency or agencies as the federal government may designate to carry out the purposes of such provision of law.

4. Except as otherwise provided in subdivision three of this section, no person shall appropriate, excavate, injure or destroy any object of archaeological and paleontological interest, situated on or under lands owned by the state of New York, without the written permission of the commissioner of education. A violation of this provision shall constitute a misdemeanor. The discovery of such objects shall be forthwith reported to the commissioner by the state department or agency having jurisdiction over such lands.

5. Permits for the examination, excavation or gathering of archaeological and paleontological objects upon the lands under their respective jurisdictions may be granted by the heads of state departments or other state agencies to persons authorized by the commissioner of education for the purposes of the state museum and state science service, with a view to the preservation of any such objects worthy of permanent preservation and, in all cases, to the acquisition and dissemination of knowledge relating thereto.

L.1947, c. 820; amended L.1958, c. 121, eff. March 6, 1958.

¹ 23 U.S.C.A. § 170.

APPENDIX F: Native American Grave Protection and Repatriation Act

Native American Graves Protection and Repatriation Act

AS AMENDED

This Act became law on November 16, 1990 (Public Law 101-601; 25 U.S.C. 3001 et seq.) and has been amended twice. This description of the Act, as amended, tracks the language of the United States Code except that (following common usage) we refer to the "Act" (meaning the Act, as amended) rather than to the "subchapter" or the "title" of the Code.

25 U.S.C. 3001,
Definitions

Section 2

For purposes of this Act, the term—

(1) **"burial site"** means any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which as a part of the death rite or ceremony of a culture, individual human remains are deposited.

(2) **"cultural affiliation"** means that there is a relationship of shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or Native Hawaiian organization and an identifiable earlier group.

(3) **"cultural items"** means human remains and—

(A) **"associated funerary objects"** which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, and both the human remains and associated funerary objects are presently in the possession or control of a Federal agency or museum, except that other items exclusively made for burial purposes or to contain human remains shall be considered as associated funerary objects.

(B) **"unassociated funerary objects"** which shall mean objects that, as a part of the death rite or ceremony of a culture, are reasonably believed to have been placed with individual human remains either at the time of death or later, where the remains are not in the possession or control of the Federal agency or museum and the objects can be identified by a preponderance of the evidence as related to specific individuals or families or to known human remains or, by a preponderance of the evidence, as having been removed from a specific burial site of an individual culturally affiliated with a particular Indian tribe,

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(C) “**sacred objects**” which shall mean specific ceremonial objects which are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents, and

(D) “**cultural patrimony**” which shall mean an object having ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual Native American, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of the Indian tribe or Native Hawaiian organization and such object shall have been considered inalienable by such Native American group at the time the object was separated from such group.

(4) “**Federal agency**” means any department, agency, or instrumentality of the United States. Such term does not include the Smithsonian Institution.

(5) “**Federal lands**” means any land other than tribal lands which are controlled or owned by the United States, including lands selected by but not yet conveyed to Alaska Native Corporations and groups organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.].

(6) “**Hui Malama I Na Kupuna O Hawai’i Nei**” means the nonprofit, Native Hawaiian organization incorporated under the laws of the State of Hawaii by that name on April 17, 1989, for the purpose of providing guidance and expertise in decisions dealing with Native Hawaiian cultural issues, particularly burial issues.

(7) “**Indian tribe**” means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act) [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

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(8) “**museum**” means any institution or State or local government agency (including any institution of higher learning) that receives Federal funds and has possession of, or control over, Native American cultural items. Such term does not include the Smithsonian Institution or any other Federal agency.

(9) “**Native American**” means of, or relating to, a tribe, people, or culture that is indigenous to the United States.

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

(11) “**Native Hawaiian organization**” means any organization which—

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

(B) has as a primary and stated purpose the provision of services to Native Hawaiians, and

(C) has expertise in Native Hawaiian Affairs, and

shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei.

(12) “**Office of Hawaiian Affairs**” means the Office of Hawaiian Affairs established by the constitution of the State of Hawaii.

(13) “**right of possession**” means possession obtained with the voluntary consent of an individual or group that had authority of alienation. The original acquisition of a Native American unassociated funerary object, sacred object or object of cultural patrimony from an Indian tribe or Native Hawaiian organization with the voluntary consent of an individual or group with authority to alienate such object is deemed to give right of possession of that object, unless the phrase so defined would, as applied in section 7(c) of this Act [25 U.S.C. 3005(c)], result in a Fifth Amendment taking by the United States as determined by the United States Court of Federal Claims pursuant to

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28 U.S.C. 1491 in which event the “right of possession” shall be as provided under otherwise applicable property law. The original acquisition of Native American human remains and associated funerary objects which were excavated, exhumed, or otherwise obtained with full knowledge and consent of the next of kin or the official governing body of the appropriate culturally affiliated Indian tribe or Native Hawaiian organization is deemed to give right of possession to those remains.

(14) “Secretary” means the Secretary of the Interior.

(15) “tribal land” means—

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

(B) all dependent Indian communities;

(C) any lands administered for the benefit of Native Hawaiians pursuant to the Hawaiian Homes Commission Act, 1920 [42 Stat. 108], and section 4 of Public Law 86-3 [note preceding 48 U.S.C. 491].

25 U.S.C. 3002,
Ownership

25 U.S.C. 3002(a),
Native American
human remains and
objects

Section 3

(a) The ownership or control of Native American cultural items which are excavated or discovered on Federal or tribal lands after November 16, 1990, shall be (with priority given in the order listed)—

(1) in the case of Native American human remains and associated funerary objects, in the lineal descendants of the Native American; or

(2) in any case in which such lineal descendants cannot be ascertained, and in the case of unassociated funerary objects, sacred objects, and objects of cultural patrimony—

(A) in the Indian tribe or Native Hawaiian organization on whose tribal land such objects or remains were discovered;

(B) in the Indian tribe or Native Hawaiian organization which has the closest cultural affiliation with such remains or objects and which, upon notice, states a claim for such remains or objects; or

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(C) if the cultural affiliation of the objects cannot be reasonably ascertained and if the objects were discovered on Federal land that is recognized by a final judgment of the Indian Claims Commission or the United States Court of Claims as the aboriginal land of some Indian tribe—

(1) [sic] in the Indian tribe that is recognized as aboriginally occupying the area in which the objects were discovered, if upon notice, such tribe states a claim for such remains or objects, or

(2) [sic] if it can be shown by a preponderance of the evidence that a different tribe has a stronger cultural relationship with the remains or objects than the tribe or organization specified in paragraph (1), in the Indian tribe that has the strongest demonstrated relationship, if upon notice, such tribe states a claim for such remains or objects.

25 U.S.C. 3002(b),
Unclaimed Native
American remains and
objects

(b) Native American cultural items not claimed under subsection (a) of this section shall be disposed of in accordance with regulations promulgated by the Secretary in consultation with the review committee established under section 8 of this Act [25 U.S.C. 3006], Native American groups, representatives of museums and the scientific community.

25 U.S.C. 3002(c),
Intentional excavation
and removal of Native
American human
remains and objects

(c) The intentional removal from or excavation of Native American cultural items from Federal or tribal lands for purposes of discovery, study, or removal of such items is permitted only if—

(1) such items are excavated or removed pursuant to a permit issued under section 4 of the Archaeological Resources Protection Act of 1979, as amended, [16 U.S.C. 470cc] which shall be consistent with this Act;

(2) such items are excavated or removed after consultation with or, in the case of tribal lands, consent of the appropriate (if any) Indian tribe or Native Hawaiian organization;

(3) the ownership and right of control of the disposition of such items shall be as provided in subsections (a) and (b) of this section; and

(4) proof of consultation or consent under paragraph (2) is shown.

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25 U.S.C. 3002(d),
Inadvertent discovery
of Native American
remains and objects

(d)(1) Any person who knows, or has reason to know, that such person has discovered Native American cultural items on Federal or tribal lands after November 16, 1990, shall notify, in writing, the Secretary of the Department, or head of any other agency or instrumentality of the United States, having primary management authority with respect to Federal lands and the appropriate Indian tribe or Native Hawaiian organization with respect to tribal lands, if known or readily ascertainable, and, in the case of lands that have been selected by an Alaska Native Corporation or group organized pursuant to the Alaska Native Claims Settlement Act of 1971 [43 U.S.C. 1601 et seq.], the appropriate corporation or group. If the discovery occurred in connection with an activity, including (but not limited to) construction, mining, logging, and agriculture, the person shall cease the activity in the area of the discovery, make a reasonable effort to protect the items discovered before resuming such activity, and provide notice under this subsection. Following the notification under this subsection, and upon certification by the Secretary of the department or the head of any agency or instrumentality of the United States or the appropriate Indian tribe or Native Hawaiian organization that notification has been received, the activity may resume after 30 days of such certification.

(2) The disposition of and control over any cultural items excavated or removed under this subsection shall be determined as provided for in this section.

(3) If the Secretary of the Interior consents, the responsibilities (in whole or in part) under paragraphs (1) and (2) of the Secretary of any department (other than the Department of the Interior) or the head of any other agency or instrumentality may be delegated to the Secretary with respect to any land managed by such other Secretary or agency head.

25 U.S.C. 3002(e),
Relinquishment

(e) Nothing in this section shall prevent the governing body of an Indian tribe or Native Hawaiian organization from expressly relinquishing control over any Native American human remains, or title to or control over any funerary object, or sacred object.

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18 U.S.C. 1170,
Illegal trafficking
in Native American
human remains and
cultural items

Section 4

(a) Chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new section:

Section 1170

“(a) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit, the human remains of a Native American without the right of possession to those remains as provided in the Native American Graves Protection and Repatriation Act shall be fined in accordance with this title, or imprisoned not more than 12 months, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, or imprisoned not more than 5 years, or both.”

“(b) Whoever knowingly sells, purchases, uses for profit, or transports for sale or profit any Native American cultural items obtained in violation of the Native American Grave Protection and Repatriation Act shall be fined in accordance with this title, imprisoned not more than one year, or both, and in the case of a second or subsequent violation, be fined in accordance with this title, imprisoned not more than 5 years, or both.”

(b) The table of contents for chapter 53 of title 18, United States Code, is amended by adding at the end thereof the following new item:

“1170, Illegal Trafficking in Native American Human Remains and Cultural Items.”

25 U.S.C. 3003,
Inventory for human
remains and associ-
ated funerary objects

25 U.S.C. 3003(a),
In general

25 U.S.C. 3003(b),
Requirements

Section 5

(a) Each Federal agency and each museum which has possession or control over holdings or collections of Native American human remains and associated funerary objects shall compile an inventory of such items and, to the extent possible based on information possessed by such museum or Federal agency, identify the geographical and cultural affiliation of such item.

(b)(1) The inventories and identifications required under subsection (a) of this section shall be—

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(A) completed in consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders;

(B) completed by not later than the date that is 5 years after November 16, 1990, [the date of enactment of this Act], and

(C) made available both during the time they are being conducted and afterward to a review committee established under section 8 of this Act [25 U.S.C. 3006].

(2) Upon request by an Indian tribe or Native Hawaiian organization which receives or should have received notice, a museum or Federal agency shall supply additional available documentation to supplement the information required by subsection (a) of this section. The term “documentation” means a summary of existing museum or Federal agency records, including inventories or catalogues, relevant studies, or other pertinent data for the limited purpose of determining the geographical origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American human remains and associated funerary objects subject to this section. Such term does not mean, and this Act shall not be construed to be an authorization for, the initiation of new scientific studies of such remains and associated funerary objects or other means of acquiring or preserving additional scientific information from such remains and objects.

25 U.S.C. 3003(c),
Extension of time for
inventory

(c) Any museum which has made a good faith effort to carry out an inventory and identification under this section, but which has been unable to complete the process, may appeal to the Secretary for an extension of the time requirements set forth in subsection (b)(1)(B) of this section. The Secretary may extend such time requirements for any such museum upon a finding of good faith effort. An indication of good faith shall include the development of a plan to carry out the inventory and identification process.

25 U.S.C. 3003(d),
Notification

(d)(1) If the cultural affiliation of any particular Native American human remains or associated funerary objects is determined pursuant to this section, the Federal agency or museum concerned shall, not later than 6 months after the completion of the inventory, notify the affected Indian tribes or Native Hawaiian organizations.

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(2) The notice required by paragraph (1) shall include information—

(A) which identifies each Native American human remains or associated funerary objects and the circumstances surrounding its acquisition;

(B) which lists the human remains or associated funerary objects that are clearly identifiable as to tribal origin; and

(C) which lists the Native American human remains and associated funerary objects that are not clearly identifiable as being culturally affiliated with that Indian tribe or Native Hawaiian organization, but which, given the totality of circumstances surrounding acquisition of the remains or objects, are determined by a reasonable belief to be remains or objects culturally affiliated with the Indian tribe or Native Hawaiian organization.

(3) A copy of each notice provided under paragraph (1) shall be sent to the Secretary who shall publish each notice in the Federal Register.

25 U.S.C. 3003(e),
Definition of
inventory

(e) For the purposes of this section, the term “inventory” means a simple itemized list that summarizes the information called for by this section.

25 U.S.C. 3004,
Summary for unassociated
funerary objects, sacred
objects, and cultural
patrimony

Section 6

25 U.S.C. 3004(a),
In general

(a) Each Federal agency or museum which has possession or control over holdings or collections of Native American unassociated funerary objects, sacred objects, or objects of cultural patrimony shall provide a written summary of such objects based upon available information held by such agency or museum. The summary shall describe the scope of the collection, kinds of objects included, reference to geographical location, means and period of acquisition and cultural affiliation, where readily ascertainable.

25 U.S.C. 3004(b),
Requirements for the
summary

(b)(1) The summary required under subsection (a) of this section shall be—

(A) in lieu of an object-by-object inventory;

(B) followed by consultation with tribal government and Native Hawaiian organization officials and traditional religious leaders; and

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(C) completed by not later than the date that is 3 years after November 16, 1990, [the date of enactment of this Act].

(2) Upon request, Indian Tribes and Native Hawaiian organizations shall have access to records, catalogues, relevant studies or other pertinent data for the limited purposes of determining the geographic origin, cultural affiliation, and basic facts surrounding acquisition and accession of Native American objects subject to this section. Such information shall be provided in a reasonable manner to be agreed upon by all parties.

25 U.S.C. 3005,
Repatriation

25 U.S.C. 3005(a),
Repatriation of Native American human remains and objects possessed or controlled by Federal agencies and museums

Section 7

(a)(1) If, pursuant to section 5 of this Act [25 U.S.C. 3003], the cultural affiliation of Native American human remains and associated funerary objects with a particular Indian tribe or Native Hawaiian organization is established, then the Federal agency or museum, upon the request of a known lineal descendant of the Native American or of the tribe or organization and pursuant to subsections (b) and (e) of this section, shall expeditiously return such remains and associated funerary objects.

(2) If, pursuant to section 6 of this Act [25 U.S.C. 3004], the cultural affiliation with a particular Indian tribe or Native Hawaiian organization is shown with respect to unassociated funerary objects, sacred objects or objects of cultural patrimony, then the Federal agency or museum, upon the request of the Indian tribe or Native Hawaiian organization and pursuant to subsections (b), (c) and (e) of this section, shall expeditiously return such objects.

(3) The return of cultural items covered by this Act shall be in consultation with the requesting lineal descendant or tribe or organization to determine the place and manner of delivery of such items.

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(4) Where cultural affiliation of Native American human remains and funerary objects has not been established in an inventory prepared pursuant to section 5 of this Act [25 U.S.C. 3003], or the summary pursuant to section 6 of this Act [25 U.S.C. 3004], or where Native American human remains and funerary objects are not included upon any such inventory, then, upon request and pursuant to subsections (b) and (e) of this section and, in the case of unassociated funerary objects, subsection (c) of this section, such Native American human remains and funerary objects shall be expeditiously returned where the requesting Indian tribe or Native Hawaiian organization can show cultural affiliation by a preponderance of the evidence based upon geographical, kinship, biological, archaeological, anthropological, linguistic, folkloric, oral traditional, historical, or other relevant information or expert opinion.

(5) Upon request and pursuant to subsections (b), (c) and (e) of this section, sacred objects and objects of cultural patrimony shall be expeditiously returned where—

(A) the requesting party is the direct lineal descendant of an individual who owned the sacred object;

(B) the requesting Indian tribe or Native Hawaiian organization can show that the object was owned or controlled by the tribe or organization; or

(C) the requesting Indian tribe or Native Hawaiian organization can show that the sacred object was owned or controlled by a member thereof, provided that in the case where a sacred object was owned by a member thereof, there are no identifiable lineal descendants of said member or the lineal descendants, upon notice, have failed to make a claim for the object under this Act.

25 U.S.C. 3005(b),
Scientific study

(b) If the lineal descendant, Indian tribe, or Native Hawaiian organization requests the return of culturally affiliated Native American cultural items, the Federal agency or museum shall expeditiously return such items unless such items are indispensable for completion of a specific scientific study, the outcome of which would be of major benefit to the United States. Such items shall be returned by no later than 90 days after the date on which the scientific study is completed.

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25 U.S.C. 3005(c),
Standard for
repatriation

(c) If a known lineal descendant or an Indian tribe or Native Hawaiian organization requests the return of Native American unassociated funerary objects, sacred objects or objects of cultural patrimony pursuant to this Act and presents evidence which, if standing alone before the introduction of evidence to the contrary, would support a finding that the Federal agency or museum did not have the right of possession, then such agency or museum shall return such objects unless it can overcome such inference and prove that it has a right of possession to the objects.

25 U.S.C. 3005(d),
Sharing of information by Federal agencies and museums

(d) Any Federal agency or museum shall share what information it does possess regarding the object in question with the known lineal descendant, Indian tribe, or Native Hawaiian organization to assist in making a claim under this section.

25 U.S.C. 3005(e),
Competing claims

(e) Where there are multiple requests for repatriation of any cultural item and, after complying with the requirements of this Act, the Federal agency or museum cannot clearly determine which requesting party is the most appropriate claimant, the agency or museum may retain such item until the requesting parties agree upon its disposition or the dispute is otherwise resolved pursuant to the provisions of this Act or by a court of competent jurisdiction.

25 U.S.C. 3005(f),
Museum obligation

(f) Any museum which repatriates any item in good faith pursuant to this Act shall not be liable for claims by an aggrieved party or for claims of breach of fiduciary duty, public trust, or violations of state law that are inconsistent with the provisions of this Act.

25 U.S.C. 3006,
Review committee

25 U.S.C. 3006(a),
Establishment

Section 8

(a) Within 120 days after November 16, 1990, the Secretary shall establish a committee to monitor and review the implementation of the inventory and identification process and repatriation activities required under sections 5, 6 and 7 of this Act [25 U.S.C. 3003, 3004, and 3005].

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25 U.S.C. 3006(b),
Committee
membership

(b)(1) The Committee established under subsection (a) of this section shall be composed of 7 members,

(A) 3 of whom shall be appointed by the Secretary from nominations submitted by Indian tribes, Native Hawaiian organizations, and traditional Native American religious leaders with at least 2 of such persons being traditional Indian religious leaders;

(B) 3 of whom shall be appointed by the Secretary from nominations submitted by national museum organizations and scientific organizations; and

(C) 1 who shall be appointed by the Secretary from a list of persons developed and consented to by all of the members appointed pursuant to subparagraphs (A) and (B).

(2) The Secretary may not appoint Federal officers or employees to the committee.

(3) In the event vacancies shall occur, such vacancies shall be filled by the Secretary in the same manner as the original appointment within 90 days of the occurrence of such vacancy.

(4) Members of the committee established under subsection (a) of this section shall serve without pay, but shall be reimbursed at a rate equal to the daily rate for GS-18 of the General Schedule for each day (including travel time) for which the member is actually engaged in committee business. Each member shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5 [United States Code].

25 U.S.C. 3006(c),
Committee
responsibilities

(c) The committee established under subsection a) of this section shall be responsible for—

(1) designating one of the members of the committee as chairman;

(2) monitoring the inventory and identification process conducted under sections 5 and 6 of this Act [25 U.S.C. 3003 and 3004] to ensure a fair, objective consideration and assessment of all available relevant information and evidence;

(3) upon the request of any affected party, reviewing and making findings related to—

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(A) the identity or cultural affiliation of cultural items, or

(B) the return of such items;

(4) facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable;

(5) compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains;

(6) consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations;

(7) consulting with the Secretary in the development of regulations to carry out this Act;

(8) performing such other related functions as the Secretary may assign to the committee; and

(9) making recommendations, if appropriate, regarding future care of cultural items which are to be repatriated.

25 U.S.C. 3006(d),
Admissibility of
records

(d) Any records and findings made by the review committee pursuant to this Act relating to the identity or cultural affiliation of any cultural items and the return of such items may be admissible in any action brought under section 15 of this Act [25 U.S.C. 3013].

25 U.S.C. 3006(e),
Recommendations
and report

(e) The committee shall make the recommendations under paragraph (c)(5) of this section in consultation with Indian tribes and Native Hawaiian organizations and appropriate scientific and museum groups.

25 U.S.C. 3006(f),
Committee access

(f) The Secretary shall ensure that the committee established under subsection (a) of this section and the members of the committee have reasonable access to Native American cultural items under review and to associated scientific and historical documents.

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25 U.S.C. 3006(g),
Duties of the
Secretary, regulations,
and administrative
support

(g) The Secretary shall—

(1) establish such rules and regulations for the committee as may be necessary, and

(2) provide reasonable administrative and staff support necessary for the deliberations of the committee.

25 U.S.C. 3006(h),
Annual report to
Congress

(h) The committee established under subsection (a) of this section shall submit an annual report to the Congress on the progress made, and any barriers encountered, in implementing this section during the previous year.

25 U.S.C. 3006(i),
Committee
termination

(i) The committee established under subsection (a) of this section shall terminate at the end of the 120-day period beginning on the day the Secretary certifies, in a report submitted to Congress, that the work of the committee has been completed.

25 U.S.C. 3007,
Penalty assessment,
museums

Section 9

(a) Any museum that fails to comply with the requirements of this Act may be assessed a civil penalty by the Secretary of the Interior pursuant to procedures established by the Secretary through regulation. A penalty assessed under this subsection shall be determined on the record after opportunity for an agency hearing. Each violation under this subsection shall be a separate offense.

25 U.S.C. 3007(a),
Penalty

25 U.S.C. 3007(b),
Amount of penalty

(b) The amount of a penalty assessed under subsection (a) of this section shall be determined under regulations promulgated pursuant to this Act, taking into account, in addition to other factors—

(1) the archaeological, historical, or commercial value of the item involved;

(2) the damages suffered, both economic and noneconomic, by an aggrieved party, and

(3) the number of violations that have occurred.

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25 U.S.C. 3007(c),
Legal actions to
recover penalties

(c) If any museum fails to pay an assessment of a civil penalty pursuant to a final order of the Secretary that has been issued under subsection (a) of this section and not appealed or after a final judgment has been rendered on appeal of such order, the Attorney General may institute a civil action in an appropriate district court of the United States to collect the penalty. In such action, the validity and amount of such penalty shall not be subject to review.

25 U.S.C. 3007(d),
Authority to issue
subpoenas

(d) In hearings held pursuant to subsection (a) of this section, subpoenas may be issued for the attendance and testimony of witnesses and the production of relevant papers, books, and documents. Witnesses so summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States.

25 U.S.C. 3008,
Grants

Section 10

25 U.S.C. 3008(a),
Grants to Indian tribes
and Native Hawaiian
organizations

(a) The Secretary is authorized to make grants to Indian tribes and Native Hawaiian organizations for the purpose of assisting such tribes and organizations in the repatriation of Native American cultural items.

25 U.S.C. 3008(b),
Grants to museums

(b) The Secretary is authorized to make grants to museums for the purpose of assisting the museums in conducting the inventories and identification required under sections 5 and 6 of this Act [25 U.S.C. 3003 and 3004].

25 U.S.C. 3009,
Limitations on apply-
ing the Act

Section 11

Nothing in this Act shall be construed to—

(1) limit the authority of any Federal agency or museum to—

(A) return or repatriate Native American cultural items to Indian tribes, Native Hawaiian organizations, or individuals, and

(B) enter into any other agreement with the consent of the culturally affiliated tribe or organization as to the disposition of, or control over, items covered by this Act;

(2) delay actions on repatriation requests that are pending on November 16, 1990;

(3) deny or otherwise affect access to any court;

Native American Graves Protection and Repatriation Act

(4) limit any procedural or substantive right which may otherwise be secured to individuals or Indian tribes or Native Hawaiian organizations; or

(5) limit the application of any State or Federal law pertaining to theft or stolen property.

25 U.S.C. 3010,
Special relationship
between the Federal
Government and
Indian tribes and
Native Hawaiian
organizations

Section 12

This Act reflects the unique relationship between the Federal Government and Indian tribes and Native Hawaiian organizations and should not be construed to establish a precedent with respect to any other individual, organization or foreign government.

25 U.S.C. 3011,
Regulations

Section 13

The Secretary shall promulgate regulations to carry out this Act within 12 months of November 16, 1990.

25 U.S.C. 3012,
Authorization of
appropriations

Section 14

There is authorized to be appropriated such sums as may be necessary to carry out this Act.

25 U.S.C. 3013,
Judicial jurisdiction
and enforcement

Section 15

The United States district courts shall have jurisdiction over any action brought by any person alleging a violation of this Act and shall have the authority to issue such orders as may be necessary to enforce the provisions of this Act.

APPENDIX G: Qualifications of the Principal Investigator, Karen S. Hartgen, RPA

Hartgen Archeological Associates, Inc.
Cultural Resource Specialists

1744 WASHINGTON AVENUE EXT. • RENSSELAER, NEW YORK 12144

KAREN S. HARTGEN
Registered Professional Archeologist

Qualifications:

36 CFR 61 Qualified Archeologist

Education:

State University of New York at Albany
Master of Arts, Anthropology, December 1988

State University of New York at Albany
Bachelor of Arts, Anthropology, January 1970

Experience:

March 1973 to Present

President and Principal Investigator
Hartgen Archeological Associates, Inc.

I have directed the cultural resource management firm since 1973, completing over 5000 cultural resource projects in New York and New England. The firm currently has a full time staff of 50 and a trained seasonal staff of 30. We provide services in historical documentation, site file searches, field reconnaissance, archeological survey and excavation, treatment of human remains, artifact conservation, collection management, cartography, GIS, GPS, architectural history, historic structure survey, National Register nominations, Environmental Impact Evaluations as mandated under NEPA, NHPA, SHPA and SEQR and Vermont's Act 250. Archeological surveys include initial surveys to locate sites (Phase IA and IB), development of research designs and field methodologies to identify sites (Phase II), and subsequently data retrieval as mitigating measures (Phase III). Hartgen has offices in Albany, Rensselaer, and New York City, New York, and Putney, Vermont.

June 1974 to 1978

New York State Museum and Science Service
State Education Department, Albany
Assistant Highway Salvage Coordinator

Administration and coordination of the Highway Salvage Archeology Program for New York State during field seasons. Intermediary between various State agencies and cooperating institutions in the process of project evaluation and impact mitigation. Also prepared detailed financial reports for Federal reimbursement.

Professional Affiliations:

Registered Professional Archaeologist (RPA)
Adjunct Research Associate, University at Albany, SUNY
Instructor, Historic Archeology, Masters of Science in Building Conservation,
Rensselaer Polytechnic Institute
Board Member, Iroquois Indian Museum
State Plan for Historic Resources Steering Committee Member, for Office of
Parks, Recreation and Historic Preservation
Town Historian, North Greenbush

Albany Institute of History and Art
American Cultural Resources Association, Board Member
Archaeological Conservancy
Archaeological Institute of America
Capital Repertory Theater
Council for Northeast Historic Archaeology
Eastern States Archeological Federation
Friends of New Nethland
Greenbush Historical Society
Historic Albany Foundation
The Holland Society of New York
Hudson-Mohawk Industrial Gateway
Maine Archaeological Society
Maryland Archeological Society
National Trust for Historic Preservation
The Native American Institute at Columbia-Green Community College
New Hampshire Archaeological Society
New Hampshire Preservation Alliance
New York Archaeological Council
New York State Archaeological Association
Northeastern Anthropological Association
Preservation League of New York State
Saratoga Performing Arts Center, Inc.
Schenectady Historical Society
Society of American Archaeology
Society of Historic Archeology
Scenic Hudson
Society for Industrial Archeology
Vermont Archaeological Society
Women's Transportation Seminar

Former President, New York State Archaeological Association (NYSAA)
Former Board Member, Cornell Cooperative Extension of Rensselaer County
Former President, New York Archaeological Council (NYAC)

Publication:

1997	Preserving Albany's Past: The Battle over the Broadway-Maiden Lane Archeological Site. <i>De Halve Maen</i> , The Holland Society of New York.
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APPENDIX H: SHPO Project Review Cover Form

PROJECT REVIEW COVER FORM

Please complete this form and attach it to the top of any and all information submitted to this office for review.
Accurate and complete forms will assist this office in the timely processing and response to your request.

☒ This information relating to a previously submitted project
PROJECT NUMBER 03 PR 03020
(Previous number assigned to this project by this office)

If you have checked this box and noted the previous Project Review (PR) number assigned by this office you do not need to continue unless any of the required information below has changed.

☐ This is a new project

If you have checked this box you will need to complete ALL of the following information.

Project Name Great Sacandaga Lake Historic Properties Management Plan

Location Please see attached sheet for counties, towns and villages.
You MUST include street number, street name and/or County, State of Interstate route number if applicable

City/Town/Village _____
List the correct municipality in which your project is being undertaken. If in a NON-INCORPORATED hamlet/village you must also provide the name of the town.

County _____

If your project covers multiple communities/counties please attach a list defining all municipalities/counties included.

TYPE OF REVIEW REQUIRED/REQUESTED

1. Is this project being developed using New York State funds ? ☐ Federal funds ? ☐

If you checked either or both of these boxes list the New York State and/or Federal Agency or Program that is providing the funding:

2. Does this project requires a New York State permit ? ☐ Federal permit ? ☒

If you checked either or both of these boxes list the New York State and/or Federal Agency or Program that is providing the permit and the type of permit being requested:

Federal Energy Regulatory Commission Licence No. 12252-000

3. SEQRA ☐ New York State
Environmental Quality
Review Act

4. Information Request ☐
No state or federal funding or permit(s)
involved

CONTACT PERSON FOR PROJECT

Name Christopher Kilkenny Title Project Director

Firm/Agency Hartgen Archeological Associates, Inc.

Address 524 Broadway, Second Floor City Albany STATE NY Zip 12207

Phone (518) 427-0382 Fax (518) 427-0384