

MEMORANDUM

Subject: Federal Highway Administration Guidance on the
Consideration of Historic and Archeological
Resources in the Highway Project Development
Process

From: Director, Office of Environmental Policy
Washington, D.C. 20590

To: Regional Federal Highway Administrators
Direct Federal Program Administrator (HDF-1)

Date: December 23, 1988

Reply to
Attn. of: HEV-20

Attached is an updated guidance package addressing the consideration of historic and archeological resources in the project development process. The guidance updates and supersedes the material distributed on December 30 1986, which is found in the Environmental Guidebook (Tab 3). Another copy will be included in the annual update scheduled for distribution early in 1989.

Revisions to the guidance were based upon comments of FHWA field offices and the States. A number of requests for additional guidance were also received. These issues are being investigated and, if appropriate, additional questions and discussions will be provided at a later date. Please direct any questions to Mr. Bruce Eberle at 366-2060.

/ Original signed by /

Ali F. Sevin

Attachment

GUIDANCE ON THE CONSIDERATION
OF
HISTORIC AND ARCHEOLOGICAL RESOURCES
IN THE HIGHWAY PROJECT
DEVELOPMENT PROCESS

This guidance is intended to fill the gap between the Advisory Council on Historic Preservation and National Park Service publications and to interpret their regulations to the FHWA program and provide maximum flexibility to State highway agencies' programs.

ENVIRONMENTAL ANALYSIS DIVISION
OFFICE OF ENVIRONMENTAL POLICY
FEDERAL HIGHWAY ADMINISTRATION

December, 1988

A. **HISTORIC AND ARCHEOLOGICAL RESOURCE CONSIDERATIONS IN ENVIRONMENTAL DOCUMENTATION**

1. **Background**

Consideration for the protection of historic and archeological resources must be included as a factor in the decision-making process of transportation projects. Legislative and Executive mandates on the need to preserve and enhance cultural resources (which include historic and archeological resources) have been expressed in the Department of Transportation (DOT) Act of 1966, the Federal-aid Highway Act of 1968, the National Environmental Policy Act of 1969, the National Historic Preservation Act of 1966, Executive Order 11593 of 1971, the Archeological and Historic Preservation Act of 1974, the American Indian Religious Freedom Act of 1978, the Archeological Resource Protection Act of 1979 and the Surface Transportation and Uniform Relocation Assistance Act of 1987. In addition, regulations by the Council on Environmental Quality (40 CFR, Part 1500-1508) and the Advisory Council on Historic Preservation (ACHP) (36 CFR, Part 800) have been promulgated to assure that effects on historic and archeological resources are considered in the development of Federal undertakings.

Part 800.4(b) of the ACHP regulation states, "In consultation with the State Historic Preservation Officer, the Agency Official shall make a reasonable and good faith effort to identify historic properties that may be effected by the undertaking and gather sufficient information to evaluate the eligibility of these properties for the National Register." Part 800.14 of the regulation encourages that consideration of historic and archeological resources coincide with environmental reviews to provide the public as well as the decision-maker with the fullest and most complete information available on how various project alternatives will affect historic and archeological resources.

To accomplish the intent of legislation and regulations, it is necessary that the project's area(s) of potential effect be established and that certain levels of investigation of historic and archeological resources be accomplished during the transportation project development process. A discussion of these effects must be included in the environmental documentation. The investigation and discussion should be commensurate with the importance of the historic and archeological resources as well as the magnitude of the project's impacts on the resources. Throughout the development process, the decision-maker must have sufficient information for each resource which may be impacted either directly or indirectly by the proposed Federal undertaking to make well-informed decisions relating to the proposed undertaking.

2. **Draft Environmental Documentation Stage**

The Federal Highway Division Administrator should ensure that steps are taken to identify resources potentially eligible for the National Register of Historic Places, provide for early and continuing coordination with the State Historic Preservation Officer (SHPO), and properly consider and evaluate the potential effects on these resources.

The draft environmental document should discuss those historic and archeological

resources which were identified within the area of the potential effect of each of the alternatives under consideration. The evidence of coordination with and comments by the SHPO should be included in the environmental document.

To obtain adequate information to evaluate and compare alternatives for impact on historic and archeological resources and to subsequently consider appropriate mitigation activities, the following steps should be performed:

Background Research - Locate and evaluate existing records and inventories of historic and archeological resources.

The State Historic Preservation Plan if it exists, should be checked to identify the preservation and research concerns and priorities in the particular region. Coordination with knowledgeable groups or individuals is also appropriate. The background work should provide the context and association within which to identify and evaluate resources. The work should be performed under the supervision of a qualified investigator with experience in that region and should reference all sources consulted.

Field Investigation - Reconnaissance - Each alternative under consideration in preparation of the draft environmental document should be investigated in the field unless reliable investigations have already been performed and are considered adequate.

Field reconnaissance should be performed on the basis of a well defined plan of investigation developed after the background research by trained and experienced Investigators familiar with the region. The field reconnaissance should consist of a visual inspection to identify or confirm potential resources based on the expectations that were identified by background research.

Since inspection of the ground surface or facade alone may not reveal a resource it may be necessary to perform limited subsurface or interior investigation when there is reasonable cause to expect that a significant resource is present. It is intended that this investigation be limited in scale and be confined to those resources where inspection of the ground surface or facade is not sufficient to define the type, extent, magnitude, and significance of the resources.

Based on the information gained at these stages it should be possible for the Division Administrator in consultation with the State Historic Preservation Officer to reach a decision on eligibility of the resources for the National Register and the applicability of Section 4(f) to the resource. If applicable the draft environmental document should include a Draft Section 4(f) evaluation.

3. Final Environmental Documentation Stage (Including Categorical Exclusions)

The discussion of historic and archeological resources for the preferred alternative should consider: (a) the type and extent of the resource, (b) its eligibility for the National Register, (c) the importance of the resource in terms of the State Historic Preservation Plan, (d) the effect of the project on the resource, and (e) the measures to avoid or minimize harm for all resources

determined to be eligible and affected by this alternative. Coordination with the SHPO and the ACHP should be documented for all resources on or eligible for the National Register. The documentation prepared to complete Section 106 procedures (ACHP comments, an approved Memorandum of Agreement, a finding of "No Adverse Effect," or a finding of "No Effect") should be included or summarized in the final environmental document.

To obtain the information necessary to develop, evaluate, and agree upon a reasonable resource-specific mitigation plan, additional background research and/or field investigation may be needed.

Additional Background Research - Consult with the SHPO, other knowledgeable groups or individuals, and other sources (documents) as much as possible in this research. (Reference should be made to all sources consulted.)

Field Investigation - Testing - Tailor the testing program so that it obtains the specific information needed with a minimum amount of disruption and damage to the resource. The program should consist of detailed and controlled examination, collection, and subsurface testing to sufficiently understand the type, extent, depth, and complexity of the resource so that eligibility of the resources for the National Register can be assessed and recommendations regarding the scope and costs of appropriate mitigation activities can be developed.

When the Division Office consults with the ACHP during the Section 106 consultation process on projects having a Section 4(f) involvements its correspondence to the ACHP should indicate that, a preliminary conclusion has been reached, subject to the Region's Section 4(f) approval action, that there are no feasible and prudent alternatives to the use of the resource. The letter should clearly reflect that the preliminary conclusion is based on the information available to the Division at that time. The Section 106 documentation is used to complete the Section 4(f) evaluation.

The final environmental document shall summarize the historic and archeological resources identified for each alternative that was under consideration at the draft environmental document stage.

4. Access to Property

Every effort should be made to initiate the identification and evaluation of historic and archeological resources in the early planning stages so that compliance with Section 106 of the National Historic Preservation Act (implemented by 36 CFR, Part 800) and, as appropriate, Section 4(f) of the DOT Act is accomplished at the final environmental document stage in accordance with the FHWA Technical Advisory (T 6640.8A). Most states have right-of-entry statutes that allow access to private property in unusual situations. Where access to property for identification and evaluation of historic and archeological resources cannot be gained or is considered to not be prudent or is determined to be non-essential, the environmental document should clearly justify the decisions including consultation with the SHPO, and must provide reasonable assurance that the Section 106 or Section 4(f) requirements will be met when access is obtained.

B. QUESTIONS AND DISCUSSIONS ON HISTORIC PRESERVATION SUBJECT MATTERS

1. **QUESTION: What Obligations And Responsibilities Does FHWA Have Under The National Historic Preservation Act (As Amended)?**

DISCUSSION: The Congress and the President (E.O. 11593) have charged all agencies of the Federal government to foster conditions to preserve our prehistoric and historic resources and to respond to the needs of present and future generations. Federal agencies are also charged to provide leadership and encouragement to other groups in the preservation of prehistoric and historic resources.

The Congress has also required that all Federal agencies take account of the effect of a project on any property on or eligible for the National Register of Historic Places. Section 106 of the National Historic Preservation Act requires, in addition, that the agency provide the Advisory Council on Historic Preservation a reasonable opportunity to comment on the project. The Advisory Council has issued a regulation (36 CFR Part 800) that describes these matters in detail. The FHWA has elected to adopt the Advisory Councils regulations.

Should a property, affected by a project, be a National Historic Landmark, Section 110 requires that planning and action be taken to minimize harm to the maximum extent possible. Section 110 also requires that the Advisory Council be provided the opportunity to comment.

2. **QUESTION: What Obligations And Responsibilities Does FHWA Have Under The Archeological And Historic Preservation Act?**

DISCUSSION: The FHWA views the Archeological and Historic Preservation Act as reinforcing the broad mandates and responsibilities set forth in the National Environmental Policy Act, Section 106 of the National Historic Preservation Act, and Title 23 of the United States Code. Specifically, FHWA should ensure adequate identification, recovery,, protection, and preservation of scientific, prehistoric,, historic, and archeological data. The FHWA does not view the issuance of the Archeological and Historic Preservation Act as imposing any new requirements or procedures on its current historic and archeological program.

3. **QUESTION: What Obligations and Responsibilities Does FHWA Have Under The American Indian Religious Freedom Act?**

DISCUSSION: The American Indian Religious Freedom Act (1978) requires Federal agencies to consider the effects of their programs on places and practices of religious importance to American Indians, Eskimos, and Native Hawaiians. In many cases, these places are eligible to the National Register and are thus considered under Section 106. Division Administrators should consult and coordinate with the appropriate Native American group if they believe property of religious importance to Native Americans may be affected. Information about who to contact should be sought from the State Historic Preservation Officer and the Bureau of Indian Affairs, U.S. Department of the Interior.

4. **QUESTION: What Is FHWA's Role In Carrying Out The Advisory Council on Historic Preservations's Regulation?**

DISCUSSION: Under historic preservation regulation 36 CFR, Part 800 (Protection of Historic and Cultural Properties) the FHWA Division Administrator is the "agency official" responsible for coordinating with the Advisory Council on Historic Preservation and the State Historic Preservation Officer. It is the Division Administrator's responsibility to carry out this regulation. The State highway agency may often act as a coordinator in the process, but the final responsibility remains FHWA'S. In a pertinent court decision--Hall County Historical Society vs. Georgia DOT, 447 F. Supp. 741 (N.D. Ga. 1978)--involving a highway project, a Federal district court found that Section 106 of the National Historic Preservation Act required independent Federal evaluation and not simply a "rubber stamp" of the conclusions reached by State officials. Based on the regulations and further emphasized by this court decision, it is essential that FHWA be involved throughout the Section 106 process and make an independent finding to fulfill its legal responsibilities.

5. **QUESTION: What Is An Archeological Resource?**

DISCUSSION: An archeological resource is a location that contains evidence or indications of previous human presence or activity. Archeological resources include areas or structures used for: living, working, ceremonies, trade, transportation* conflict and recreation. A study of these resources can further our understanding of human behavior and of the interaction of people and their environment.

Archeological resources are not restricted to specific periods in time. For example, a resource that provides additional or new information about the people who used it is an archeological resource whether it was used 2,000 years ago by Native Americans, 200 years ago by settlers or explorers, or even more recently by a specific group about whom the information is desired.

An archeological resource may be considered "significant" and eligible for the National Register of Historic Places when it provides information that appears to be useful in addressing and resolving scientific questions. The type, amount or density of artifacts, such as isolated finds of stone implements or widely

6. **QUESTION: What is a Historic Resource?**

DISCUSSION: A historic resource is: a district; site; building; structure; or object which is important in American history, architecture, archeology, engineering, or culture. The resource may be of value to the Nation as a whole or important only to the State or community in which it is located. The association with events that have made a significant contribution to the broad pattern of our history, such as a battlefield or a meeting places may make a property a historic resource. A historic resource could be associated with the lives of notable persons such as the laboratories and buildings of Thomas Edison at Menlo Park. Historic resources may also be those resources which embody the distinctive characteristics of types period, or method of construction, such as a Romanesque style building, a cast-iron building or a concrete arched bridge.

Normally, a resource must be 50 years old before it may be even considered to qualify as historic. However, this basic rule-of-thumb may be waived if the event, technology, or association is of exceptional importance.

Just because a building or place is older than 50 years does not mean it is or should be determined to be historic. Even though old, resources must have integrity and meet the criteria for the National Register of Historic Places.

7. **QUESTION: What is a Research Design?**

DISCUSSION: A research design is a clear and concisely prepared written statement that identifies: (a) the important questions that need to be dealt with at each specific site or resource to mitigate an effect; (b) why the answers to these questions will be valuable contributions to our understanding of human behavior and human interrelationships with the environment; (c) the general approach, specific methods, and techniques that will need to be employed to answer these questions and the data that need to be present and extracted to address the questions; (d) when the work should be scheduled; (e) how much each portion of the work will cost; and (f) what the qualifications are of the personnel needed to perform the work.

The need for research designs has been stressed as a necessary management practice by those involved with cultural resource management. It is no longer sufficient to state that archeological investigations should be performed because excavation might turn up something new. The emphasis on research design is intended to focus specifically on the benefit derived from the work while minimizing the cost, times and level of the effort. Because research designs are plans of approach, methods and intention, they can and should be modified as historic or archeological investigations progress.

8. **QUESTION: How Can Qualified Specialists Be Located?**

DISCUSSION: The best source for locating qualified specialists is the State Historic Preservation Officer. Many State Historic Preservation Officers maintain lists of individuals and groups who have done acceptable work or can suggest others capable of doing this type of work.

The State Museum, the State Archeologist, and the State Historian usually have contacts with those trained to perform archeological or historic work. State or private universities or university museums often have specialists on their staffs who may be willing to perform historic or archeological work under contract. The Society of Professional Archeologists or the American Institute of Architects may provide helpful leads. The Regional Offices of the Department of the Interior's National Park Service may be able to suggest trained, experienced specialists in such fields as archeology, history, and architectural history.

It must be recognized that different agencies, State or Federal, require different approaches and involve different constraints. The FHWA's field offices and the States should ensure that specialists understand what **FHWA** needs to assure compliance with Federal laws and regulations.

9. **QUESTION: How Should FHWA Deal With A Significant Resource Whose Boundary Has Not Been Defined or is Not Well Defined?**

DISCUSSION: If the eligibility of a historic or archeological resource has not been determined, then it should fall into the normal identification process which is conducted early in the planning process. The boundaries will be determined in consultation with the State Historic Preservation Officer who will do so by applying the National Register criteria. The final boundary definition will come when the determination of eligibility request (with the boundary proposed by the State highway agencies the State Historic Preservation Officer, and FHWA) is approved by the National Register.

The boundaries of archeological resources will generally be located at the points where evidence of systematic, human-behavior patterns as opposed to random occurrence is found. This underscores the need for having a research design and conducting a detailed investigation. Should anticipated patterns not develop as expected, it will probably be necessary to reevaluate the resource limits.

The boundaries of historic resources will generally be based on the nature of the association the resource has to American history, architecture, engineering or culture. If the association is with a person or group, the appropriate boundary may be the land owned by the person or group. If the association is with a particular event the boundary may border the land on which the event occurred. The boundary should include reasonable property to convey a sense of historic cohesiveness. For example the metes and bounds of the tract of land on which a historic house rests should not be used if the land is not a contributing element. In such a case, the boundary should be drawn fairly closely to the house itself.

Before a historic or archeological resource is determined eligible for the National Register, the boundary should already be defined. If it had not been clearly defined, the Division Administrator and the State highway agency should work through the State Historic Preservation Officer (SHPO) to arrive at a firm definition of boundaries. If the SHPO will not commit to a firm boundary the Division Administrator can directly request the National Register for its concurrence on the boundary FHWA believes is reasonable. This request should include sufficient information to support FHWA's determination and a summary of the steps that were taken to resolve this matter with the State Historic Preservation Officer.

10. **QUESTION: What Investigation Methods Are Considered Practical For The Study And Evaluation Of Highway Alternatives?**

DISCUSSION: The most appropriate initial source for input is the State Historic Preservation Officer (SHPO). The SHPO should be able to provide up-to-date information about the resource base, ongoing studies, and the state-of-the-art techniques. Input from other sources should also be considered by FHWA in reaching its final decision.

Another source of guidance concerning investigation methods for archeological resources is a U.S. Department of the Interior (DOI) publication entitled "The Archeological Survey: Methods and Uses" (1978). The Advisory Council on Historic Preservation has

offered guidance in a booklet entitled "Treatment of Archeological Properties: A Handbook" (1980). The DOI has also issued nonregulatory material entitled "Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines" (1983). The Advisory Council and the National Park Service have jointly issued a publication entitled "Identification of Historic Properties: A Decisionmaking Guide for Managers" (1988).

Sources of general guidance, including investigation methods for historical resources, include "Guidelines for Local Surveys: A Basis for Preservation Planning" (1977), and "Historic and Archeological Preservation: Secretary of the Interior's Standards and Guidelines" (1983). Both of these documents were developed by the U.S. Department of the Interior. The most appropriate source of information on Investigation of historic bridges is the Transportation Research Board publication entitled "Historic Bridges: Criteria for Decision Making" (1983).

11. **QUESTION: Can Predictive Techniques Be Utilized For Survey And Evaluation Of Highway Alternatives?**

DISCUSSION: Predictive techniques are used to estimate the probability of archeological resources present in a particular landform or environmental zone based on the background research or the surface indications. Predictive techniques can be cost effective when applied to large regions; such as states, river valleys, or mountain ranges. Predictive techniques can also be useful to help determine the most appropriate level and type of study needed. However, concentrating all survey work in areas identified by predictive techniques as having the highest probability for archeological resources would not be justified. Areas of low probability still need to be examined but usually at a lower level of effort to ensure that initial assumptions or background data are acceptable. For this reason, predictive techniques are not often cost effective for transportation projects.

While predictive techniques normally provide information on the expectation of the presence or absence of resources, they often fail to provide meaningful data; such as the boundary of the resources the vertical extent of the resources the Importance of the resources for interpretation or scientific study, and the likelihood of the resources being eligible for the National Register. Many of these concerns need to be examined individually to adequately evaluate the impact of the various highway alternatives under consideration upon archeological resources. For these reasons, predictive techniques should@ be used only with extreme caution.

12. **QUESTION: How Should FHWA Deal With Borrow Areas, Haul Roads, Preparation Sites, And Other Areas Selected By Contractors?**

DISCUSSION: The locations of contractor-selected storage areas, borrow areas., preparation sites, haul roads, staging areas, disposal areas* etc.p are not known until after the contracts have been awarded. This situation causes FHWA difficulty in ensuring its responsibility to consider the impact of Federal projects on historic and archeological resources.

The procedures that are developed to fulfill this Federal responsibility vary from state to

state. It is, however, FHWA's responsibility to ensure that the state's procedures for evaluating impacts of borrow areas storage areas, preparation sites, haul roads, staging areas, disposal areas, etc., are responsive to Section 106 requirements prior to the approval of Federal funds.

Potential contractors should be made aware that any impacts on historic and archeological resources on or eligible for the National Register of Historic Places directly related to the Federal project are subject to compliance with the National Historic Preservation Act (Section 106) and @16 CFR 300.

"Directly related to the Federal Project" means that the area(s) in question is either designated in the contract or the number of areas available is practically so limited as to require the selection of a historic or archeological resource. For example, if the contract specifies a particular material only available at a site within a historic or archeological resource, then use of that site is "directly related" even if it is not specified. Similarly,, if a project is located so that all borrow areas which are economically feasible to use are located in historic or archeological areas, then use of the area is directly related. On the other hand, if borrow material is available from many places, and the contractor happens to select a source entirely at the contractor's option which is in an historic or archeological resource, the use of the site is not "directly related" to the Federal project.

Even where contractor operations in borrow areas, etc., are not directly related to a project, it is FHWA's policy to provide leadership in the preservation of the prehistoric and historic resources of the United States.

1. During the environmental process archeological surveys are made to identify archaeological resources that may be present. Avoidance of these resources is one consideration in selection for the final highway alignment. Contractors should coordinate with the SHA prior to making commitments on the selection of borrow, disposal or other use areas so that known archeological resources may be avoided.
2. When unanticipated archeological resources are uncovered in a contractor furnished site, the contractor should notify the SHA and the SHPO and avoid the resource if possible. If it is possible to avoid the resource, a professional archaeologist should survey the resource and assist in determining the appropriate action to pursue regarding the resource.

The above procedure should be reflected in all contracts, agreements, etc., concerning the State, contractors, and property owners. Any additional costs incurred by the contractor should be negotiated between the State and the contractor.

13. **QUESTION:** When A Resource Is Disturbed Or Modified Can It Still Be "Significant"?

DISCUSSION: Yes, for example, a resource that has been plowed, built upon, and subsequently destroyed by fire may still produce archeological information that has never been known to exist in that specific area before. Such a resource would probably be "significant#" even though it has been disturbed. The presence of artifacts alone, however, is not sufficient reason to make a resource "significant."

A resource that has been moved has normally lost its integrity of location. However, if the quality that makes the resource historic does not relate to location then the resource may continue to be "significant" (e.g., a bridge is significant as an example of bridge engineering technology). If the bridge was moved but the move did not modify the method of construction, it is still "significant." If the same bridge had been modified over time by replacement of various elements with those of more modern designs it might have lost integrity of design even though it had never been moved.

14. **QUESTION:** When Does A "Question" Arise Regarding A Determination Of Eligibility When FHWA And The State Historic Preservation Officer Agree?

DISCUSSION: There have been cases of other Federal agencies or individual citizens informing us that they believe a question exists concerning a property's eligibility. Such communications should be evaluated to see if they provide any new information that would cause a reversal of a previous decision made by the Federal agency and the State Historic Preservation Officer that the property does or does not meet the National Register criteria.

When the ACHP is notified by any person that they believe a property is eligible the ACHP will refer the matter to the Secretary of the Interior. The Secretary will then evaluate the eligibility of the property or request information from the Federal agency.

15. **QUESTION:** How Long Should Investigations Take?

DISCUSSION: Investigations involving historic buildings or structures are normally more straightforward than those involving archeological resources--which are often hidden from view. Generally, investigations of historic resources take no longer than a few days or weeks. When historic districts need to be evaluated, the duration often increases to 2 - 3 months. Mitigation work such as measured drawings, photographs, and the written report may take 2 - 4 weeks for major buildings or structures.

Archeological investigations often take more time than historic investigations. The following general time guides may be helpful:

Background Research - Archival, record searches, etc.: 2 - 4 weeks per project.

Primary Reconnaissance - Field work involving surface examination and limited subsurface testing (e.g., shovel tests or test squares): 2 - 16 weeks per project.

Additional Background Research - Interviews and archival research focused on specific persons, buildings or structures: 2 - 6 weeks per project.

Intensive Site Investigation - Field work done at selected locations to more fully evaluate the extent, form, and type of deposits for purposes of mitigation analysis: 4 - 24 weeks per project.

Recovery Work - Site-wide excavation and/or systematic sampling analysis and report preparation determined adequate for the purposes of mitigating the impact of a project: 2 - 24 months per project.

16. **QUESTION:** How Can FHWA Determine If Historic/Archeological Investigations Are Performed Adequately?

DISCUSSION: The monitoring to assure that the historic or archeological investigations are performed adequately is similar to the monitoring performed on any planning or project-related activity for which FHWA has responsibility. If the State Historic Preservation Officer has developed guidelines for investigations or reports these will be helpful. Review of periodic status

reports and occasional discussions with the personnel responsible for or assigned to conduct the historic/archeological investigation should provide enough information to assure adequate performance.

In some cases, specialized technical assistance may be needed. This is available through State agencies such as the State Historic Preservation Office, the State archeologist, colleges, or universities. The FHWA can also obtain assistance from the Regional field offices of the National Park Service. Technical assistance may also be obtained from the Office of Environmental Policy.

17. **QUESTION:** What Should Be Included In An Archeological Or Historic Report?

DISCUSSION: There is no specific format for archeological reports. It is logical that reports need to clearly and concisely identify what was done, where, @, and why it was done; what specific analyses were performed; and what was added to our understanding by the work done. All reports should reflect an honest attempt to provide new insights or information towards solving the research questions identified in the research design and in the State Historic Preservation Plan. Maps, photographs, drawings, and tables are valuable additions and often permit lengthy discussions to be reduced to clear, concise statements. The State Historic Preservation Officer may have developed guidelines on reporting that will be helpful.

There is also no specific format for historic reports on buildings or bridges. They should also clearly and concisely identify the what, where, how, why, as well as what specific analyses or investigations were done and @t was added to our understanding of the construction or technical development. The report should tie-in with the effort to research questions identified in the research design and in the State Historic Preservation Plan. Reports on buildings or bridges should also provide a variety of clear and precise photographs and drawings. The sizes, materials etc.p of these items are specified by the Historic American Building Survey and the Historic American Engineering Record for resources which are recorded during mitigation. The State Historic Preservation Officer may have developed guidelines on reporting that will be helpful.

Management summaries and abstracts are encouraged as is a section containing the professional opinions and recommendations of the principal investigator.

18. **QUESTION:** Who Should Be Provided With Copies Of Final Mitigation Reports?

DISCUSSION: All historic and archeological reports are part of the project. documentation. As such, they should be retained by the Division Office and the State and/or local highway agency, as appropriate. A copy of every report should be sent to the State Historic Preservation Officer.

Archeological reports should be provided to the State archeologist, the State museum or library in addition to the State Historic Preservation Officer, the State highway agency, and the Federal Highway Administration. At the Federal level, an informational copy should be made available to the Department of the Interior's (DOI) National Park Service Archeology Assistance Division in Washington, D.C. The National Park Service will forward final mitigation reports to the National Technical Information Service if they determine such action appropriate.

Historical reports should be provided to the State museum or library in addition to the State Historic Preservation Officer, the State highway agency and the Federal Highway Administration. At the Federal levels a copy should be provided to the DOI's National Park Service Regional Office or the Historic American Building Survey/Historic American Engineering Record (HABS/HAER) Division in Washington, D.C. The National Park Service will forward final drawings, photographs, and reports to the Library of Congress if they determine such action to be appropriate.

Copies of reports may also be made available for review and comment if previously agreed upon. A limited number of copies of reports may be made available to the archeological community if it is determined by the Division Administrator to be in the public benefit and without financial gain to any party.

If wide-spread public interest is expected, a short edited version focused at the non-academic public may be prepared. Copies of public reports should be provided to the State Historic Preservation Officer, the FHWA Regional Office, and the appropriate National Park Service Division.

19. **QUESTION:** What Public Involvement Activities Are Required Of FHWA Under The ACHP Regulation?

DISCUSSION: The Division Administrator should assure that interested parties receive adequate information of historic issues for projects affecting historic properties. Normally, public involvement activities conducted by the State Highway Agency (SHA) under 23 CFR 771 will meet the new ACHP requirement for public involvement. However, SHA public involvement procedures may not cover all aspects of the Section 106 process. Under the ACHP regulation, the Division Administrator must also ensure in these cases that consideration is given to public involvement.

The ACHP has the authority to hold public meetings. Normally, such meetings are not held unless the project has serious impacts to historic properties and is controversial. If it appears likely that the ACHP may hold a public meetings the Division Administrator should consider holding a joint meeting with the ACHP.

20. **QUESTION:** Can The Section 106 Process Be Shortened When An Archeological Resource Is Involved?

DISCUSSION: When agreement has been reached among the State Historic Preservation Officer,, the State highway agency, and the FHWA on how to deal with an archeological resource which will be impacted, the process @ be shortened. Rather than proceeding with a Memorandum of Agreement the parties may develop a "No Adverse Effect" determination. This determination commits the parties to the proposed mitigation but does not involve "consultation" with the Advisory Council on Historic Preservation or preparation of a Memorandum of Agreement unless the Advisory Council on Historic Preservation objects to the determination.

The requirements and the procedures for utilizing this "No Adverse Effect" option are contained in Part 800.8(a)(1-5). In addition pages 17-19 of the Advisory Council on Historic Preservation's "Treatment of Archeological Properties: A Handbook" (1980) should be consulted. Copies are available from the Advisory Council or the FHWA Regional Office.

21. **QUESTION:** By What Authorities May FHWA Mitigate Impacts Of Highway Projects On Historic And Archeological Resources?

DISCUSSION: The FHWA has many legislative authorities that permit it to mitigate impacts to historic and archeological resources. The basic authority to do whatever is necessary to accomplish the goals of the Federal-aid highway program is found in Title 23, United States Code. General authority for responsiveness to environmental issues is found in Section 109(h) and Section 138 (commonly referred to as Section 4(f)). The FHWA policy is stated in 23 CFR 771.105(d).

Section 106 of the National Historic Preservation Act provides the basic framework for national historic and archeological policy and is the basis for the Title 36 CFR, Part 800 regulations which

implement that policy. Section 302 of the National Historic Preservation Act permits agencies to expend funds to carry out Section 106 activities. The National Environmental Policy Act* the Historic and Archeological Preservation Act of 1974 (Moss-Bennett), and Executive Order 11593 all present strong statements of a national policy that require appropriate action when dealing with the mitigation of impacts of historic, archeological, and cultural resources. Section 110(g) of the 1980 amendments to the National Historic Preservation Act specifies that preservation activities performed in compliance with the Act are eligible project costs.

22. **QUESTION:** What Types Of Mitigation Options Are Practical For Archeological Resources?

DISCUSSION: The range of options for mitigating the impacts to archeological resources varies greatly. The type of mitigation ultimately agreed upon will depend upon: the importance of the information contained and recoverable in the resource, the need for preservations and the constraints on the project. In some cases* all impacts to archeological resources will need to be avoided and projects modified to avoid a resource.

If avoidance is not possible and the importance of the resource is limited to the data it contains, data recovery should be considered. The data recovery option offers a great deal of flexibility. In some cases, an entire resource could be recovered. However, due to great advances In the study of archeology, techniques are being developed which permit archeologists to study an entire resource through the recovery of only a representative sample. Sampling techniques are applied easiest to resources which have been adequately studied during reconnaissance survey and intensive testing.

In other cases, the resource may not warrant the expenditure of funds or effort needed to investigate further. The nature of the resource, the information it contains, or the results of work elsewhere may indicate that further investigation would not be efficient or cost effective. Reference should be made to the State Historic Preservation Plan. Such information will help support the State Historic Preservation Officer and the Advisory Council to agree with FHWA that the loss of the resource would be acceptable without further mitigation.

Several guidance documents are available to assist you. The FHWA developed a booklet entitled "Mitigation Options Related to Historic and Archeological Properties" (1983). The Advisory Council is developing a non-regulatory, publication entitled "Preparing Agreement Documents" which will provide a starting point for negotiations.

23. **QUESTION:** Can Archeological Resources Be Buried Without Damage?

DISCUSSION: The Department of the Interiors National Park Service, has expressed the opinion that the burial of archeological resources will damage the material and related information within the archeological resources. There is, however, disagreement within the archeological community on the effect of placing additional layers of fill material over existing archeological resources. Until the matter is resolved, archeological resources should not be buried except under extreme conditions.

24. **QUESTION:** What Types Of Mitigation Options Are Practical For Historic Resources?

DISCUSSION: The range of mitigation options for historic resources is wider than for archeological resources. Historic resources Include a wide range of property types. Projects may impact historic resources to various degrees or In various ways. In generating the widest mitigation options for historic resources it may be helpful to initially consider that the preservation community would adopt a "no expenses time or effort is too large" approach. This will help ensure consideration of the fullest range imaginable. Ultimately, these options will be coordinated

and reduced until the parties can arrive at a mitigation option which offers an appropriate balance between the project and the resource. The balanced mitigation option should be reasonable to all parties justifiable to ally and meet the requirements of laws and regulations. (See Question #21)

The "best" option is avoidance. Sometimes the project may be modified to eliminate all impacts on the resource. The impacts may be eliminated on a historic bridge, for example, by limiting the traffic and loads. A more extreme step might be to close the bridge but to retain it for another type of transportation, e.g., bicycles, or retain it as a historical exhibit.

Rehabilitation of the historic resources is another general option. Efforts to rehabilitate the resource should be directed towards retaining the qualities that made the resource historic (materials scale, configuration, etc.). This option is most appropriate for structures already in use for vehicles. In most cases though, a reduced traffic service and load capacity would be appropriate. While rehabilitation to AASHTO standards is appropriate, exceptions to those standards may be justified.

If a building or structure must be modified by the project, reconstruction should be considered. Reconstruction means making the new construction appear similar to the historic portion. The degree of the modification should be the least possible in meeting required standards and exceptions to those standards in terms of service and load.

If a building or structure must be moved as a result of a project, efforts should be taken to maintain the historic qualities. If possible the resource could be incorporated into a nearby historic district. In this way the resource might continue to be preserved and possibly upgrade the new location. The setting of the new location will be an important factor to consider. Ideally, the setting should be similar to the original setting. Locating an owner to accept the resource and willingness to maintain it may involve special efforts, such as advertising and preparing deed covenants.

In cases where the building or structure cannot be relocated and must be demolished, partial recovery or salvage may be appropriate. Particular features or sections may be removed. Materials may be stored for later reconstruction or they may be displayed to help interpret the past.

Recordation or documentation is the last resort measure when a building or structure must be destroyed or demolished. This option may be employed in conjunction with the measures already discussed. This option provides a permanent record of the resource through drawings photographs and a written history. Because the resource will no longer be available for study or comparison plans to record or document resources should be coordinated with the Historic American Building Survey or the Historic American Engineering Record of the National Park Service.

25. QUESTION: May Federal Funds Be Used For:

(a) Transportation Of Recovered Materials To A Laboratory;

(b) Analysis Of Recovered Materials; (c) Curation Of Recovered Materials; (d) Moving A Historic Structure Or Building; and (e) Rehabilitating A Historic Bridge?

DISCUSSION: The FHWA may partake in funding the mitigation measures FHWA determines reasonable and cost effective to a highway project 23 CFR 771.105(d)). Additional funding authority can also be found in 23 U.S.C., Sections 109(h), 138 and 305 and in Sections 110(g) and 302 of the National Historic Preservation Act.

Several specific examples may be helpful to illustrate the above points:

- (a) The FHWA has authorized participation in transporting recovered archeological materials from an excavation site to a laboratory for cleaning and analysis, because it is more economical to move the artifacts than to move a field laboratory to the site.
- (b) The FHWA believes that participating in the analysis of recovered materials is a part of proper mitigation (data recovery) work. The FHWA will not pay for open-ended, interpretive archeological research projects but will pay for necessary analytical work limited in space and time and specified in an approved research design. Reasonable, justified efforts; such as Carbon-14 dating, report writing, and limited non-profit publication; performed as a part of an approved research design can be paid for with Federal-aid highway funds.
- (c) Curation of historic and archeological materials is a form of long-term maintenance. The responsibility for maintenance resides exclusively with the State or local highway authority. Federal-aid highway funds may not be used to perform curation. The FHWA fulfills its historic and archeological preservation responsibilities when data has been recovered, analyzed and reported.
- (d) The FHWA has authorized participation in transporting historical buildings and structures to new locations where they would be protected from the impacts of a project. In the case of bridges not maintained for motor vehicle use, funds up to the cost of demolition may be used for relocation. Short moves are usually preferable from the standpoint of cost and loss to the community.
- (e) The FHWA has authorized participation in rehabilitating historic bridges. The rehabilitation work has been guided by adherence to the integrity of historical design, scale, materials, and the flexibility permitted in accordance with generally acceptable safety design standards. Federal bridge funds may be utilized if the deficient aspects of the bridge are no longer deficient after the project. If the bridge is taken out of motorized vehicle use, funds up to the cost of demolition may be used for preservation.

26. **QUESTION:** What Stipulations Are Appropriate In A Memorandum Of Agreement Reached Under Title 36, Code Of Federal Regulations# Part 800?

DISCUSSION: A Memorandum of Agreement is the result of negotiations among the State Historic Preservation Officer, the State highway agency, the Advisory Council on Historic Preservation, other interested parties, and the FHWA that resolved the effect of the impact of a highway project on a historic or archeological resource. A Memorandum of Agreement specifies the actions that will complete the Section 106 process. Each Memorandum of Agreement must clearly and completely present specific mitigation measures to address the project's specific adverse impacts involved.

A Memorandum of Agreement is not the proper forum for making commitments to other projects or areas of general concern not related to the mitigation of the project's specific historic or archeological resources identified. Stipulations in a Memorandum of Agreement should be complete in themselves. They should reference non-FHWA standards, guidelines, regulations or other documents unless the relevant portions are specified and attached. Stipulations should not be based on the anticipated outcome of future meetings or referenda unless adequate provision is made for a decisions should they not occur.

27. **QUESTION:** How Can Reasonable Funding Limits Be Established?

DISCUSSION: There cannot be a definite answer to this question in terms of dollar amount or even percentage of project costs. Determining the acceptable and reasonable level of funding and effort is possible only after balancing various needs (23 CFR 771.105(d)).

As a first step, be certain of what the specialist is recommending. Data recovery may vary from an extensive to a minimal representative sample. Rehabilitation may signal major or minor effort. The scale of recommended work should be included in any report or proposal submitted.

The second step is to understand the reason for the amount or degree of effort proposed. Reports from specialists are often weakest in the matter of justification. The specialists should tie-in any work recommended to the State Historic Preservation Plan and to generally 'accepted research questions. The Division Administrator should coordinate with the State Historic Preservation Officer on the importance of any work recommended or proposed.

Ultimately, the specialist, the State Historic Preservation Officer, or some other knowledgeable individual must provide an understanding of why the recommended amount or degree of effort is important or relevant to the project area or a larger area of the State or to a scientific discipline. There should be a clear logical connection between the project impacts and the work recommended.

At this point, the Division Administrator should take into account the "value" of the resources, the basis for the level of effort recommended, the potential return on the effort and any legislative limitations, such as related to historic bridges. Discuss the situation with others more experienced; the Regional Office is the best source for finding out who has done what before. After taking all of this into accounts the Division Administrator will establish a reasonable funding limit.

28. **QUESTION:** What Action Should The FHWA Take When The Consultation Process Is Terminated?

DISCUSSION: When all attempts to reach an agreement between FHWA, the State Historic Preservation Officer, and the ACHP are exhausted and an impasse, is reached, any party may terminate the consultation process. When the consultation process is terminated, the Federal agency shall, under the ACHP regulation# request the comments of the ACHP.

The Division Administrator is the "agency official" responsible for coordinating with the ACHP. Prior to making the request for comment, the Division will consult with the Regional Office and the Office of Environmental Policy (HEV-20). HEV-20's role will be advisory to the Region and through it to the Division to ensure that all procedural steps are adequately completed and all appropriate data is included. The Division Administrator will request the ACHP comments on the project in accordance with 800.5(e)(6) and 800.6(b). The other consulting parties will be notified when ACHP comments are being requested. The Division Administrator will prepare responses to subsequent Advisory Council correspondence.