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Appendix A

Licensor/Licensee Letter from DAG Roop



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
RICHARD J. HUGHES JUSTICE COMPLEX
25 MARKET STREET
CN 112
TRENTON, NJ 08625-0112

DEBORAH T. PORITZ
Attorney General

CRISTINE TODD WHITMAN
Governor

(609) 292-5938

June 18, 1996

Mr. Gary Corino
Director, Office of Technology
Federal Highway Administration
840 Bear Tavern Road, Suite 310
Trenton, New Jersey 08628-1019

Re: NJDOT Wireless Communications License

Dear Mr. Corino:

As requested at our June 5, 1996, meeting, I am writing to validate the NJDOT's decision to issue licenses to wireless communications carriers instead of entering into leases.

A lease gives to the lessee a right of possession of the property leased and a right to the exclusive use and occupation of the property for all purposes not prohibited by its terms. A license, on the other hand, merely confers permission to do a particular act upon the land of another without conveying any interest or estate in the land. As is well-established by case law, the difference between a lease and a license

is that a lease gives exclusive possession of the premises against all the world, including the owner, while a license confers a privilege to occupy under the owner. See e.g., Thiokol Chemical Corporation v. Morris County Board of Taxation, 41 N.J. 405, 417 (1964).

A lease ordinarily constitutes an agreement by the owner-lessor to turn over certain specified premises to the exclusive possession of the lessee for a definite period of time for a consideration commonly called rent. Id. at 416. A license is nonexclusive and revocable at the will of the licensor.

As you can see, the licensing arrangements entered into by NJDOT and the carriers allow the agency to retain greater control over the use and occupancy of its property than it would have if the relationship between the parties was that of lessor and lessee. Licensing arrangements allow for the sharing of sites by carriers,



June 18, 1996

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termination at the will of the State and the setting of fixed fees that are applicable to every carrier placing similar equipment on sites in the same geographical area.

I hope that this letter provides you with the information you desired. If you have any further questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

DEBORAH T. PORITZ
ATTORNEY GENERAL OF NEW JERSEY

By: 
Susan R. Rupp
Deputy Attorney General

cc: Jeff Lanigan, NJDOT

Appendix B

Master Agreement Letter from DAG Roop



State of New Jersey

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CHRISTINE TODD WHITMAN
 Governor

PETER VERNIERO
 Attorney General

JAYNEE LAVECCHIA
 Assistant Attorney General
 Director

(609) 292-5938
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May 5, 1997

ACCESS DESIGN	
DATE	NAME
MAY 08 1997	ALL
	X LANIGAN
	EUGENE
	GERING
	MCCARTHY
	TRUEMAN
	MEIDHOF
	NOVAR
	✓ SOLOVIM
	FILE

Mr. Gary Corino
 Director, Office of Technology
 Federal Highway Administration
 840 Bear Tavern Road, Suite 310
 Trenton, New Jersey 08628-1019

Re: NJDOT Wireless Communications Master Agreement

Dear Mr. Corino:

On behalf of the New Jersey Department of Transportation, I am writing in response to the Federal Highway Administration's comments concerning the above-referenced agreement. These comments were attached, as Enclosure 4, to a March 18, 1996, letter from Division Administrator Merida to then-Commissioner Wilson.

My responses are presented in the same order in which your comments appear in Enclosure 4:

- 1) Page 3, line 5 - Yes. They are included as part of the electronic equipment associated with the Carrier's wireless communication system.
- 2) Page 3, line 5 - I understand that the NJDOT will require underground installations.
- 3) Page 3 - I understand that the NJDOT will include such plans in the individual site agreements.
- 4) Page 6, B - The fees are based on both geographic location and equipment

and building space factors. Appropriate market rates cannot be established with reference to location and population density, alone.

5) Page 8, sec. 4.A - In stating that the Carrier must return the site to its original condition to the satisfaction of the NJDOT, the agreement encompasses all site improvements. Section 16 of the agreement makes the Carrier solely responsible for the remediation of contamination that it creates.

6) Page 9, sec. 4.D - This provision will be interpreted with reference to the fact that the use of NJDOT properties is the sole subject of this agreement.

7) Page 10, par. 1 - The force majeure provisions apply to material breaches of this agreement. The need for emergency repairs is covered by Section 13 of the agreement.

8) Page 10, par. 2 - See response #5 above.

9) Page 12, sections 7 & 8; Page 13, sec. 8 - I am advised by the NJDOT that hours of construction, lane closures and access will be specified by the NJDOT. Parking and site access will be reviewed by the NJDOT and the department will inspect the site during construction for adherence to the plans and traffic maintenance. The NJDOT will spot-check the site after construction to insure that the Carrier is adhering to access and parking requirements.

10) Page 14, sec. 10 - Since the Carrier is responsible for all non-NJDOT facilities and activities on the site, it will have to insure that third parties are in compliance with all of the terms of the master agreement and the individual site agreement. Additionally, the Carrier must provide NJDOT with copies of contracts with third parties.

11) Page 15, sec. 11 - I am advised that on the interstates, utilities will be brought in underground. Locked gates will be installed in the control-of-access line.

12) Page 16, sec. 12 - The NJDOT agrees.

13) Page 17 - Carriers do not share their buildings.

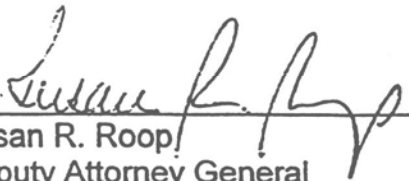
14) Page 18, sec. 15 - Pursuant to this paragraph, the "NJDOT must approve the locations where the Carrier intends to place its equipment on a temporary basis."

May 5, 1997
Page 3

I hope that this letter provides you with the responses that you desired. If you have any further questions concerning this matter, please do not hesitate to contact me.

Sincerely yours,

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: 
Susan R. Roop
Deputy Attorney General

/dmc

c: Jeff Lanigan, Department of Transportation

WIRELESS COMMUNICATION ANTENNA FACILITIES

Design Guideline

Landscape and Urban Design

1. All antenna and shelter locations shall be selected to provide for a minimum amount of site disturbance.
2. Existing trees and shrubs shall be preserved and utilized as visual buffers and screens.
3. The facility, including access drives, shall be located as far from the highway as possible to allow for additional planting or other screening treatments.
4. The facility shall be designed to blend with each site location by the use of architectural treatments and color that will minimize the visual impact of the facility.
5. Landscape parcels will not be utilized as site locations unless it can demonstrated that the facility will not impact on the visual quality of the parcel.

If it is determined that the proposed site visually impacts the parcel then mitigation measures will be identified.

APPENDIX D

8-19-98

PUBLIC PROCESS FOR THE WIRELESS ANTENNA PROGRAM

- Carrier's (site-by-site) concept submission circulated for internal review and comments by OCR and others. OCR provides project staff with preliminary indication as to the nature of public process, if any, required based on the type of installation proposed and other applicable considerations which might have impact on carrier's design, plans or schedule assumptions for a particular site.
- Project staff responds to carrier's concept submission with advice as to the public process required. (see attached categories of sites)
- OCR makes arrangements for applicable public process including written notice to local officials and public officials meeting.
- OCR completes public process, which includes public meeting notification of all residents within approximately 500' of any site and establishes a written record as appropriate.
- OCR advises project staff of disposition including any site and/or design recommendations, based upon community input.
- Carrier's detailed site submission circulated for internal review and comment by OCR and others.

Notes:

Unless otherwise determined appropriate by OCR, the "applicable public process" referred to above will generally be a public meeting organized and conducted by OCR with participation by the carrier as necessary to provide the public with complete and accurate information concerning a proposed installation.

Generally, OCR will endeavor to complete the public process and advise project staff of the disposition of a proposed installation within 60 to 90 days.

**PUBLIC PROCESS ACCORDING TO
CATEGORIES OF WIRELESS ANTENNA SITES
PHYSICAL FEATURES**

CATEGORY 1 Municipal notification, meet with local officials, and upon the passage of a 60 day comment period a site shall proceed.

Antennas attached to an existing structure, (which includes, but is not limited to, water towers, bridges, sign structures, communication towers, light poles, high mast lighting towers, CCTV poles, utility poles etc...

Whip Antennas **1"to3"** in diameter and **8'to16'** high

Panel Antennas **2" to18"** wide x **2'to 6'** high x **2"to12"** deep

Note: all dimensions are approximate and vary by manufacturer and Carrier and change with improvements in technology.

Note: antenna arrays vary by site. One to 12 antennas possible per site.

Equipment cabinets or shelters per Carrier:

2 - 4 equipments cabinets per site size varies 15"W x 15"D x 36"H to 48"W x 36"D x 72"H. OR

One equipment shelter per site size varies 10' x 20' to 15' x 30'.

Fenced area

Varies per site and only used if Carrier requires for security.

Fence is 8' high with barbed wire on top.

Access requirements;

24 hour access required by Carrier.

Technician parking at site off roadway on concrete grass pavers.

Access driveway (if required) constructed of stone, gravel or grass pavers

CATEGORY 2 Municipal notification, meet with local officials, and upon the passage of a 60 day comment period a site shall proceed.

Attached to replacement communication towers, light poles, high mast lighting towers, CCTV poles, utility poles, etc., where the height of the new equipment does not significantly exceed the overall height of the existing facility.

Antennas same as category 1

Notes: same as category 1

Equipment cabinets or shelters same as category 1

Fenced area same as category 1

Access same as category 1

CATEGORY 3 Municipal notification and meeting with local officials, followed by a public meeting or an official presentation at a municipal council meeting. All meetings will be advertised in appropriate newspaper(s) and a notification of either meeting will be sent to each resident within approximately 500' of the proposed site by either the NJDOT or the municipality (to be determined at the public officials meeting).

New poles, constructed of steel or other material, less than 70 feet in height, resembling light poles, CCTV poles, Highway Advisory Radio installations.

Antennas same as category 1

Notes: same as category 1 except one to three antennas only per site per Carrier.

Poles are tapered 12" - 24" top to bottom less than 70 feet in height

Equipment cabinets or shelters same as category 1

Fenced area same as category 1

Access same as category 1

CATEGORY 4 Municipal notification and meeting with local officials, Followed by a public meeting. All public meetings will be advertised in appropriate newspaper(s) and a notification of the meeting will be sent to each resident within approximately 500' of the proposed site by the NJDOT.

New monopoles, constructed of steel or other material, and new Lattice Towers more than 70 feet in height. (including replacement poles and lattice towers which significantly exceeds the overall height of an existing facility)

Antennas same as category 1

Notes: same as category 1

Poles are tapered 24" - 60" top to bottom more than 70 feet in height

Lattice Towers three or four sided 12' - 24' per side more than 70 feet in height.

Equipment cabinets or shelters same as category 1

Fenced area same as category 1

Access same as category 1

Appendix E

D.C.A. Plan Submission Checklist

Department of Community Affairs
Bureau of Construction Project Review

PLAN SUBMISSION CHECK LIST HIGHLIGHTS

- 3 sets of signed and sealed plans (by NJ registered architect or NJ licensed engineer)
- 1 copy of the soils report, signed and sealed
Footing and foundation details
- 1 set of structural calculations signed and sealed
tower framing, cable bridge, antenna connections,
equipment platforms
For attaching to existing tower, manufacturers certification that tower can accommodate additional loads
- Prefabricated equipment buildings need IBC number
If IBC number not available at time of submission, then a certification from the manufacturer that building is IBC and number will be supplied at a later date
- Electrical plans must show details of all grounding
- Project Review Application and a check for the plan review fee.

Plan Review Submittals

Via US Mail

**NJ Dept. of Community Affairs
Bur. of Construction Project Review
Intake & Admissions
PO Box 817
Trenton, NJ 08625-0817
Tel:# Intake & Admissions 609-633-7448**

Other Delivery Service

**NJ Dept. of Community Affairs
Bur. of Construction Project Review
Intake & Admissions
101 South Broad St. 4th Floor
Trenton, NJ 08625**

Appendix F

Categorical Exclusion Document and Tutorial

NEW JERSEY DEPARTMENT OF TRANSPORTATION
CATEGORICAL EXCLUSION DOCUMENTATION

I. GENERAL INFORMATION

DOT Job Code No.	<u>2201162</u>	Federal Project No.	<u>N/A</u>
Project Management Team	<u>Wireless Communications</u>	Data Base No.	<u>N/A</u>
Route and Section	_____	Structure No.	_____
Local Road Name	_____		
Municipality	_____	County	_____
Type of Project	_____	Length	_____
From	_____	To	_____
Congressional District	_____	Legislative District	_____
ROW Cost	_____	Construction Cost	_____

EXISTING FACILITY	PROPOSED FACILITY
ROW Width _____	ROW Width _____
No. of Lanes & Width _____	No. of Lanes & Width _____
Shoulder Width _____ Median _____	Shoulder Width _____ Median _____
Overall Roadway Width _____	Overall Roadway Width _____

II. PROJECT DESCRIPTION (Attach location map)

A. Project Need (briefly explain why the project is needed)

The Department's initiative is one of creating infrastructure, resource sharing and collocation along with the Carrier's initiative to provide reliable seamless adequate coverage under the Telecommunications Act of 1996 and also to enable the Department to advance its intelligent transportation systems and its MAGIC and other technological programs under advisement. The Act encourages State departments of transportation throughout the nation to participate in placing these facilities on state owned right of way.

B. Proposed Improvements (provide a brief description of proposed improvements)

C. Right of Way Taking

Total area needed: None _____ est. number of parcels: in _____ easements- _____
 fee- _____

Est. number of relocations: residences- _____ businesses- _____ parking _____
 spaces- _____

Community facilities affected: N/A

Area (hectares) of publicrecreational land taken: 0 out of a total area of 0

III. ENVIRONMENTAL CONSIDERATIONS:

A. Noise

- _____ Sensitive receptors within 65 meters for two lanes or 130 meters for four lanes.
- _____ Project substantially changes the vertical or horizontal alignment of the roadway.
- _____ Traffic volumes or speeds substantially increase.

Conclusion:

- Noise study not required. No significant impact anticipated.
- Potential noise impacts were studied and are discussed in comments. Project still meets CE criteria.

Comments:

B. Air Quality

1. CONFORMITY WITH THE CLEAN AIR ACT AMENDMENTS (CAAA) OF 1990

- There are sensitive receptors (i.e. residences, schools, hospitals) within 65 Meters of the project.
- This project is on page _____ of the _____ approved State Transportation Improvement Plan(STIP).
- A copy of the STIP page is in the project's CED file.

2. CO ANALYSIS

- The project is located in a Carbon Monoxide Attainment Area. **If so, no CO analysis needed.**
 - The project is located in a Carbon Monoxide Non-Attainment Area.
- As defined by the Transportation Conformity Rule of 11/15/93, effective date 12/27/93, this project is a :
- Table 2 type project and therefore does not impact regional emissions and **did not require** Carbon Monoxide analysis.
 - Table 3 type project and is located in a Carbon Monoxide attainment Area and therefore did not impact regional emissions and **did not require** Carbon monoxide analysis.
 - Table 3 type project located in a Carbon Monoxide Non-Attainment area and required a Carbon Monoxide hot-spot analysis. A CO Analysis was completed at the following intersections:
and the results are:
 - Neither a Table 2 or Table 3 type project, therefore it required a Carbon Monoxide hot-spot analysis. This was done at the following intersections:
and the results are:
 - Table 3 type project and the total eight-hour Carbon Monoxide levels are expected to be reasonably below the NAAQS of 9 ppm. No significant impact is anticipated.

Comments:

This project will not have an impact on air quality.

C. Ecology & Permits (briefly describe any potential impact(s) under comments)

- | | |
|--|--|
| <input type="checkbox"/> Water Quality | <input type="checkbox"/> Sole Source Aquifer |
| <input type="checkbox"/> Floodplain | <input type="checkbox"/> Unique/Endangered Species Habitat |
| <input type="checkbox"/> Wetlands | <input type="checkbox"/> Wildlife |
| <input type="checkbox"/> Acid Soils | |

Conclusion:

- No significant impact anticipated.
- Further studies needed to obtain permits. Project still satisfies CE criteria. (see comments)
-

D. Environmental Permits/Coordination Needed:

U.S. Coast Guard (Bridge)		NJDEP Waterfront Development	
USACOE Section 404 (Individual)		NJDEP Stream Encroachment - Major	
USACOE Section 404 (Nationwide)		NJDEP Stream Encroachment - Minor	
USACOE Sec. 10 (Navigable Waters)		NJDEP Riparian	
CAFRA		NJDEP Water Quality Certificate	
NJDEP Remediation Approval		USEPA - Sole Source Aquifer	
NJDEP Coastal Wetlands		Delaware Basin Commission	
NJDEP Freshwater Wetlands - GP		D & R Canal Commission	
NJDEP Freshwater Wetlands - IP		Meadowlands Commission	
NJDEP Pollutant Discharge		Pinelands Commission	
EO 11900 Wetlands		EO 11988 Floodplain	

Comments: (potential impacts, unique features, sensitive issues)

E. Cultural Resources

Technical Findings:

- _____ No properties in Area of Potential Effect (APE)
- _____ No Effect per FHWA/SHPO Agreement of 1-12-96
- _____ No NR listed/eligible properties in APE
- _____ NR listed/eligible properties in APE (see summary table below)

Archaeology	Architecture				Sec. 106 Finding
	Bridge	Building	District	Other	
					NR listed/eligible property in APE
					NR listed/eligible property - No Effect
					NR listed/elig. property -No Adv. Effect
					NR listed/elig. prop.- NAE w/ Data Recov.
					NR listed/elig. property - Adverse Effect

Conclusion: Consultation Summary (indicate date of concurrence/approval)

- _____ SHPO concurred with Sec. 106 Finding on _____
- _____ ACHP concurred with No Adverse Effect Finding on _____
- _____ SHPO approved Data Recovery Plan on _____
- _____ ACHP approved Data Recovery Plan on _____
- _____ ACHP accepted MOA on _____

Comments :

F. Sec. 4(f) Involvement - Historic Sites

- Project results in a use of Historic site(s) on or eligible for the National Register of Historic Places.
 Project results in a "**constructive use**" of Section 4(f) property.

Conclusion:

- No Section 4(f) Involvement
 Section 4(f) Involvement. Project falls under the **Programmatic Nationwide Section 4(f) Evaluation** and all applicability criteria have been met including agreement of the SHPO with the "No Effect" recommendation.
 Section 4(f) Involvement. Project is a **Nationwide Section 4(f)** and all applicability standards have been met including agreement by the ACHP with the "**No Adverse Effect**".
 Section 4(f) Involvement. Project is covered under the **Programmatic Nationwide Section 4(f)** for Historic Bridges.
 Section 4(f) Involvement. Project has an "**Adverse Effect**". Individual Section 4(f) prepared.
Documentation: If Sec. 4(f) impacts exists - refer to Appendix for documentation.

Comments :

G. Sec. 4(f) Involvement - Recreational Land

- Project requires acquisition from Publicly-owned recreation land.
 Project results in a "Constructive Use" of Section 4(f) property.
 If either of the above are checked, fill out the following:

Site (use local name):

Lot and Block #:

Total Hectares To Be Acquired (consider acquisition and easement)

Total Hectares of Park: _____ Amount of Parkland affected: _____

Federal DOI Section 6(f) regulations or other Federal encumbrances involved.

Conclusion:

- No Section 4(f) Involvement.
 Section 4(f) Involvement. Project falls under **Temporary Occupancy**; all applicability criteria and conditions have been met (Explain below).
 Section 4(f) Involvement. Project falls under the **Programmatic Nationwide Section 4(f) Evaluation**; all applicability criteria and conditions have been met.
 Section 4(f) Involvement. **Individual Section 4(f) Evaluation** was completed, but **no significant impacts are anticipated**.
 No Section 4(f) Involvement, but any changes made to the project which require use of Section 4(f) land would require compliance with Section 4(f).

Documentation: If Sec. 4(f) impacts exists - refer to Appendix for documentation.

Comments :

H. Hazardous Materials and Landfills

- Involvement with known or suspected contaminated site. (If so, explain under comments)
 Involvement with underground storage tanks. (If so, explain under comments)

Conclusion:

- Low potential for involvement with contamination, no further investigation required.
- Further investigation and/or sampling required to determine extent of involvement with contamination. Project still
- meets FHWA criteria for a CE.

Comments:

I. Public Reaction (briefly describe input from the Office of Community Relations)

J. Environmental Commitments (list if any)

DETERMINATION OF CATEGORICAL EXCLUSION

Project name and location:

CE # :

The proposed project satisfies the Categorical Exclusion definition outlined in 23 CFR 771.117(a) and will not result in significant environmental impacts.

Manager, Bureau of Major Access Permits
Wireless Communications Unit

Date

Recommended:

Environmental Team Leader

Date

Certified

Approved

Manager, Bureau of Environmental Services

Date

Concurrence

(only needed for
CEs not certified
by BES Manager)

(FOR) - Division Administrator
Federal Highway Administration

Date

Appendix G

Scope of Work for Categorical Exclusion Document
and Historical Survey

Section 106 – National Historic Preservation Act
Review Process

CONSULTANT'S SCOPE OF WORK
FOR
CATEGORICAL EXCLUSION DOCUMENTATION

NEW JERSEY DEPARTMENT OF TRANSPORTATION
BUREAU OF ENVIRONMENTAL SERVICES

JUNE 1993
OCTOBER 1996(REVISED)

Scope of Work for Categorical Exclusion Documentation(CED)

For projects which the Bureau of Environmental Services (BES) finds can probably be classified as a type of Categorical Exclusion under 23CFR771.117(d), the consultant will be requested to submit a proposal to complete a CED. The CED will assess each project for its potential environmental impacts within the following disciplines: Ecology, Hazardous Waste, Historic Architecture, and Archeology., CED Scope of Work and the individual scopes of work, which the consultant will follow for each discipline, are enclosed separately.

The consultant shall conduct a field survey and literature search in accordance with the appropriate scope of work, and complete all requested information within the CED format (see attachment, also provided on diskette, and the CED "Tutorial" attached) using Word Perfect (tm) 5.2, 6.0 or 6.1 or MS Word.

The consultant will conduct the hazardous waste screening concurrently with the initial field survey and report the finding to BES. This information will be used to determine if worker's health and/or safety could be affected.

If no significant impacts are expected, then sufficient information should be presented in the CED form under each discipline to support such findings. On the last page of the CED form, the consultant will indicate which classification of Categorical Exclusion is appropriate.

For projects having involvement with significant historical resources, the consultant will prepare appropriate documents as required under Sec.106 regulations and assist BES, if necessary, by attending meetings with FHWA and SHPO.

The consultant is not to initiate or act independently as the Department's representative to secure permit/approvals or to insure regulatory compliance with any regulatory agencies. However, it is the consultant's responsibility to advise BES of any findings that would require coordination with such agencies.

A printed copy along with a 3.5" diskette (WordPerfect) or MS Word of the completed CED form will be submitted to BES.

The CED with all backup information and reports will be completed and submitted to the NJDOT. All information will be retained in the files of the Bureau of Environmental Services. The Bureau of Environmental Services will review the CED and contact the SHPO for concurrence.

SCOPE OF WORK
CATEGORICAL EXCLUSION DOCUMENTATION

It is requested that the consultant submit a proposal for the completion of a Categorical Exclusion Documentation (CED) which shall include the following work effort:

SUMMARY: The CED will assess each project with respect to the following environmental disciplines: Ecology, Hazardous Waste, Historic Architecture, and Archaeology. Attached are scopes-of-work (SOWs) for each of the above disciplines.

The consultant will address each discipline in accordance with the applicable SOW and will summarize the findings and environmental constraints which may be associated with each discipline. Once each discipline has been addressed, the consultant will then complete the required information in the CED form. Further detail is outlined below.

1. Conduct Field Surveys and Research of Existing Information

The consultant shall conduct a field survey and research available information for all environmental disciplines which are outlined in the attachment. This shall include a visit to the site and the identification of environmental constraints (if any) for each discipline on a preliminary plan or project sketch.

NOTE: For all projects, NJDOT-BES recommends that the consultant conduct the Hazardous Waste Screening as the first order of business. This will allow the consultant to be aware of any potential health and safety constraints which may be associated with the project, prior to conducting other disciplinary work efforts.

The consultant is authorized to contact Review and Permitting Agencies to gather technical information needed to complete the tasks specified in this Scope-of-Work.

2. Prepare CED

Using the attached CED "Tutorial" form, the consultant will complete the required information in the CED form.

The consultant shall identify the results of any coordination efforts and any mitigation requirements of the relevant resource agency.

3. Commitments

The consultant shall identify any measures which could enhance the protection of environmental resources in the project area. Some obvious examples would be the inclusion of all practical measures to avoid or minimize harm to historic resources, and wetlands. Such practical measures might include installation of temporary fencing during construction to avoid encroachment into an environmentally-sensitive resource.

4. Information to be Supplied to the Consultant

Only one (1) submission of the documentation (i.e. CED) will be required if the first submission meets the requirements as outlined in this Scope of Work. The final editing of the document will be NJDOT's responsibility. The CED should be submitted both in written form and on a 3½" disk in an IBM-compatible format as a WordPerfect (tm) 5.2, 6.0, or 6.1 or MS Word, unless another word processing language is requested at the time of the contract.

SCOPE OF WORK
CATEGORICAL EXCLUSION DOCUMENTATION
ECOLOGICAL ASSESMENT

PREFACE: The following scope describes those work tasks which should be completed to adequately address the existing ecological conditions prevailing in the project study area, and identifies possible mitigation measures to compensate for such impacts. NJDOT has developed a checklist type form for documenting these findings; this checklist should be obtained from NJDOT-BES prior to starting work.

SECTION I (General Information)

Identify staff members involved in the preparation and review of the CED Ecological Assessment. Include the date the assessment was completed/reviewed.

Describe the project's location: i.e. Route and Section Numbers, the Local Name of the Road, the Municipality, and the County.

Describe the type of project: i.e. Wireless Communications

SECTION II (Existing Conditions)

If the project area is developed, identify for what uses: i.e. Farmland or Prime Agricultural Farmland, Recreation (specify: Federal, State County, or Municipal Parkland, Wildlife Management Areas, etc.), Residential, Commercial, Industrial, Transportation, etc. If necessary, provide a brief narrative to clarify the project's relationship to the current land uses.

SECTION III (Geology, Soils, Hydrology)

Identify the Geologic formations underlying the project, the depth to bedrock (feet), all Soil Series with an obvious potential for involvement in the project, and the EPA designated Sole Source Aquifer for the region.

Make special note of the presence of hydric or acid producing soils and determine whether special soil erosion/sedimentation control measures may be required.

Note the depth to the seasonally high watertable (feet).

SECTION IV (Water Quality & Aquatic Ecology)

Name the waterbody(s) directly involved with the project and identify the NJDEPE Stream Classification(s) for each (e.g. FW-2 NT). Note the number of stream crossings associated with the project and the width of each stream (feet).

Identify the current surface water uses: i.e. Agriculture, Industry, Potable Supply, Recreation (Fishing, Boating, Swimming). Determine whether the waterbody(s) is considered by the US Coast Guard as a Navigable Waterway.

Identify whether the stream involved is a Trout Production Stream or Finfish Migratory Pathway.

Determine whether the project includes improvements that could potentially increase the concentration of roadway derived pollutants in the runoff to surface or groundwaters of the State.

Provide a brief description of any other associated waterbodies (lakes, ponds, etc.) in the vicinity.

Identify NJDEP mapped "Areas Now Or Formally Below Mean High Water" (Tidelands) by Map Title, Sheet Number, and Map Number.

SECTION V (Floodplains)

Name the waterbody(s) associated with the floodplain.

Identify the Flood Insurance Rate Map (FIRM): Indicate the Township, Date, Map Panel, and Number.

Note any potential impacts to the 100-year or 500-year floodplain.

Identify an NJDEPE Studied Floodplain by: River Basin, Sheet Number, and Flood Hazard Category.

Provide a narrative description of the project in relation to the floodplain. Specially note the estimated area of floodplain impact expected as a result of the project (in square feet and acres). Also, indicate if longitudinal impacts to the floodplain would likely occur.

SECTION VI (Wetlands & Wetlands Buffers)

Roughly establish whether wetlands are present near the site and determine the number of wetland areas directly associated with the project.

Identify each wetland by the National Wetlands Inventory (NWI) map nomenclature (e.g. PFO1), and note the approximate area each wetland covers (acres).

Determine whether an EPA Priority status has been afforded to the wetlands within the watershed.

For areas of Freshwater Wetlands, determine the expected NJDEP Wetland Resource Value Classification(s) for each (i.e. Exceptional, Intermediate, or Ordinary).

Provide a detailed narrative describing the project in relation to the wetlands. Include estimates of the area of any anticipated wetlands or wetland buffer impacts (in both acres and square feet). Impact estimates should be broken down into the following categories: Vegetated FW, Open Water, Vegetated Tidal Wetlands, Tidal Open Water, FW Transition Area, Tidal Buffers.

Identify any potential mitigation sites for wetlands and wetland transition area impacts available within the existing ROW.

SECTION VII (Vegetation & Wildlife)

Characterize the vegetative community types, and identify dominant plant species by Latin nomenclature, for both the wetlands and adjacent upland communities. Also, provide the Regional Wetlands Indicator Status for each of the dominant species. Dominant vegetation should also be identified by its position in the forest strata: i.e. Canopy, Sapling/Shrub, Herb/Groundcover, Emergent/Floating/Submerged.

Identify: Shellfish beds, Surf Clam Areas, Prime Fishing Areas, Finfish Migratory Pathways, or Submerged Aquatic Vegetation beds at the site or downstream in the vicinity of the project.

Note any unusually large "specimen" trees in the vicinity of the project which should be preserved.

Identify any relatively undisturbed natural areas or areas of good wildlife habitat which will be affected by the project and provide an estimate the impact area (acres).

Provide a detailed description and/or photographs (if possible) of any threatened or endangered plant or animal species, or critical habitat noted during the site reconnaissance. If the site has a potential for endangered species to be present, then contact the NJDEPE Office of Natural Heritage, Threatened and Endangered Species Program for information regarding historical records of sightings in the project vicinity.

SECTION VIII (Permits & Related Clearances)

Make a determination as to which Federal and State environmental clearances will be required and place a check in the space provided. The following list should be addressed, at a minimum:

EPA Designated Sole Source Aquifer
Wild and Scenic Rivers (Federal or State)

US Coast Guard (Bridge)

US ACOE

Section 404, Individual or Nationwide

Section 10

Section 9

NJDEP

Freshwater Wetlands, Individual, General, Open Water Fill, or Transition Area Waiver

Coastal (Tidal) Wetlands, Type A or Type B

CAFRA

Waterfront Development

Water Lowering

Stream Encroachment, including projects of Special Concern or involvement with the Passaic Basin Project.

Water Quality Certificate

Sanitary Facilities

Pinelands Commission

Delaware River Basin Commission

D & R Canal Commission

Meadowlands Commission

SECTION IX (Conclusions)

Discuss how permit requirements may change as the construction plans are developed, and whether the project may qualify for a Categorical Exclusion determination.

SECTION X (Recommendations)

Make a determination as to whether further ecological studies are required under NEPA, or are necessary to obtain the required permits.

SECTION XI (References)

The following list of references will provide the data necessary to complete a response to most of the environmental issues in the Ecological Assessment.

A field reconnaissance of the project site will also be necessary in order to verify or update the references. The consultant should attach a photocopy of all pertinent pages of each reference used to the completed CED. All maps should be properly labeled, have a north arrow, distance scale, and the project location clearly identified.

Preliminary or other project plans provided by NJDOT
CED Form
County Road Map

US Geological Survey Topographic Map
US Soil Conservation Service, County Soil Survey
Flood Insurance Rate Map
National Wetland Inventory Map
EPA Priority Wetlands List
NJ Hydric Soils List
NJ Important Farmlands Inventory, Prime Farmlands
NJDEPE "Areas Now Or Formally Below Mean High Water" (Tidelands) Map
NJDEPE Floodplain Study Map
NJDEPE Tidal Wetlands Map
NJDEPE Freshwater Wetlands Map
NJDEPE Surface Water Classifications
NJDEPE Shellfishing Areas, Charts 1 - 10
NJDEPE "New Jersey Submerged Aquatic Vegetation Distribution Atlas"
1980.
H.E. Zick "New Jersey Anadromous Fish Inventory," NJDEPE Miscellaneous
Report No. 41, 1977.
B.L. Freeman & L.A. Walford "Angler's Guide to the United States
Atlantic Coast Fish, Fishing Grounds and
Fishing Facilities" Sec. III & IV, 1974.
New Jersey Outdoors, September-October, 1984
Project Location Photographs
Plant Identification Handbooks

HAZARDOUS WASTE SCREENING SCOPE-OF-WORK
CATEGORICAL EXCLUSION DOCUMENTATION

INTRODUCTION

This Scope-of-Work provides the basis for development of a proposal to investigate properties within the right-of-way (ROW) or easement area of the subject project. The investigation should be designed to determine the potential for contamination within a study corridor consisting of the proposed ROW and/or easements plus 250 feet (76.25 meters) on either side. Should the consultant's screening result in a need for further hazardous waste studies (eg. sampling), the consultant will coordinate with NJDOT-BES before initiating any additional hazardous waste work efforts.

METHODOLOGY

1. Environmental Cleanup Responsibility Act

Promulgated on December 31, 1983, the Environmental Cleanup Responsibility Act (ECRA) placed preconditions on the sale, transfer or closure of industrial establishments involved in the generation, manufacture, refinement, transportation, treatment, storage, handling or disposal of hazardous wastes or substances. Essentially, the law requires that a qualifying business undergo an environmental audit before receiving approval from the New Jersey Department of Environmental Protection (NJDEP) for the transaction. Once the audit has been completed, the property owner may receive a "negative declaration" stating there have never been hazardous substance discharges on the site, or that any discharges have been cleaned up to the satisfaction of the NJDEP. If contamination is found, NJDEP-approved sampling and cleanup plans must be executed to assess contamination and detoxify the property before final clearance is given.

A. Investigative Procedure

-Using current project plans and associated information, conduct a field inspection to identify properties in the study corridor.

-Identify and describe the operations of all businesses within the study corridor. Descriptions of business operations should be kept brief and simple, and should focus primarily on any hazardous waste aspects which might be associated with a particular business practice.

-Through reference to the Standard Industrial Classification (SIC) Manual and/or the New Jersey Employer Directory, determine the SIC codes of all businesses within the study corridor. These codes should then be compared to the list of SIC group numbers subject to the ECRA.

-Once all businesses have been identified, each one should be checked against the NJDEPE ECRA Case List to see if the property owner is currently involved in cleanup operations.

-Information should be gathered for each business on the ECRA Case List by contacting the NJDEP's Bureau of Environmental Evaluation Cleanup and Responsibility Assessment.

2. Project Corridor Investigation

This activity, complementary to the ECRA study, is intended to identify additional sites of concern within the project corridor. This work should be conducted simultaneously with the ECRA study. The consultant's proposal and cost estimate should therefore reflect combined field activities for these tasks.

-List and describe properties of questionable environmental integrity. Such sites would have soil discoloration, chemical containment drums or other potentially hazardous substances present.

-Identify all sites with underground or aboveground storage tanks (USTs, ASTs). Particular attention should be given to existing or former gasoline stations within the proposed ROW/easement area. Gas station properties should be surveyed to determine locations of USTs, pump islands, and monitoring wells relative to the proposed ROW/easement area.

-Review the NJDEP's Environmental Information Inventory to identify any landfills and State-funded hazardous waste cleanup sites in the study corridor. Should a landfill be discovered within or adjacent to the proposed ROW/easement area, attention should be paid to any groundwater monitoring wells that may be in the vicinity. If necessary, additional information on a particular landfill's status may be obtained from the NJDEP's Division of Solid Waste Management.

-Check businesses/properties within the study corridor against the NJDEP's Known and Suspected Hazardous Waste Site List and the USEPA's National Priority List (Superfund). Describe any impact the proposed project may have on these sites and review any appropriate NJDEP/EPA files.

3. Agency Coordination

-Contact the appropriate NJDEP Regional Enforcement Office (Hazardous Waste and Water Resources) to determine if any actions or complaints have been filed against businesses within the study corridor. The Water Resources Unit would also have information on the presence of groundwater monitoring wells at sites other than landfills within the corridor. Files on UST properties undergoing groundwater monitoring may also be at the NJDEP's Bureau of Underground Storage Tanks.

-Gather information from local or county health offices on any recent or pending hazardous waste incidents in the project vicinity.

-Obtain UST registration information from the NJDEP's Bureau of Underground Storage Tanks for all appropriate sites. Information gathered for a particular site

would include the number, capacity, contents, and ages of tanks in use.

-Gather historical land use information from local or regional planning boards to determine whether any previous land uses may have contributed to contamination within the study corridor. Any historic land use information collected by the NJDOT's ROW would be provided to the consultant.

4. Additional Procedures

-Through use of the latest design plans, all structures scheduled for demolition should be identified. Since water and natural gas pipelines may also be insulated with asbestos, these should be discussed when a relocation of either is required. The actual asbestos assessment will be done by a certified inspector at a later date.

-As a result of the screening process, an assessment should be made of risks associated with excavation or other construction-related surface/subsurface activities. This information would be important for any archaeological or geotechnical boring investigations planned in the project area.

-Based on the results of the field inspection and associated background research, all sites suspected of having contamination should be designated "environmentally sensitive parcels" so that future ROW and Design plans will reflect this status.

-Check the NJDEP's listing of Identified Chromate Waste Sites to determine if any properties are within the project limits. (Hudson County only)

-Through the use of aerial photographs and/or Sanborn Maps, identify and describe surface features within the study area that have been modified over time by industrial or depositional activities (i.e. landfills, lagoons, drum dumps, etc.). Standard NJDEP procedure is to analyze aerials and Sanborn Maps back to 1940. Sanborn Maps are available from the NJDEP's Office of Environmental Analysis and at the New Jersey State Library. Historic aerials can be obtained from the NJDEP's Division of Coastal Resources (Planning Group).

5. Documentation of Findings

The results of the study shall be documented in a report consisting of the categories outlined below. The report should explain results of the screening and provide justification for any recommended soil sampling. Soil sampling recommendations should be restricted to sites within the proposed ROW/easement area. Adjacent properties need only be considered for sampling if contaminant migration is suspected or confirmed. Based on the analyses performed, a recommendation should be made (and justified) for which alternative(s) to advance to the next phase of project development.

An example of one acceptable format for the Site Contamination Screening Report follows. Alternative formats will be accepted, as long as all of the necessary information is contained therein.

Site Contamination Screening Report

- I INTRODUCTION
- II PROJECT DESCRIPTION
- III METHODOLOGY
- IV SCREENING RESULTS/CONTAMINATION POTENTIAL/SAMPLING
JUSTIFICATION
- V AGENCY COORDINATION
- VI GLOSSARY
- VII BIBLIOGRAPHY
- VIII VITAE
- IX APPENDICES

SCOPE OF WORK HISTORIC ARCHITECTURAL SURVEY

I. INTRODUCTION

The services required under this Scope are pursuant to the intents and purposes of: Section 101(b)(4) of the National Environmental Policy Act; Section 1(3) and 2(b) of Executive Order 11593; Section 106 of the National Historic Preservation Act of 1966 as amended; and the "Procedures for the Protection of Historic and Cultural Properties" as set forth in 36 CFR Part 800 as amended.

Without duplicating any work meeting accepted professional standards, and using current guidelines developed by the NJ Historic Preservation Office (NJ HPO), the Consultant will evaluate all historically and/or architecturally significant structures in the project's Area of Potential Effect (see III. A. below). For historic bridges (i.e. structures which are at least 20 feet in length and which were constructed prior to 1946), the New Jersey Department of Transportation (NJDOT) will supply completed Historic Bridge Survey forms which document an assessment of the individual eligibility of the structures. The survey report should cite any comments on the eligibility of the bridge which have been provided by the NJ HPO. Bridges included in the Historic Bridge Survey must still be evaluated within their cultural context to determine if they are part of an historic district. If, during the course of the project survey, new information is found which was not considered during the Historic Bridge Survey, the consultant may provide an opinion on the individual eligibility of bridges which were previously evaluated. The significance of all structures in the Area of Potential Effects will be determined using the **Criteria for Evaluation** established by the National Register of Historic Places and published in 36 CFR §60.4. For each structure listed in or determined eligible for listing in the National Register of Historic Places, the consultant will apply the Criteria of Effect and Adverse Effect as described in 36 CFR §800. 9. Finally, mitigation measures will be recommended for each structure which will be adversely effected by the proposed construction.

All work carried out pursuant to this scope of work will be performed by or under the direct supervision of a person or persons meeting the Secretary of the Interior's Qualifications Standards for the discipline(s) required to complete the necessary work. All information submitted in connection with this survey must be sufficient to enable FHWA and others to complete the reviews required under the laws and regulations cited above, including Determinations of Eligibility by the Secretary of the Interior.

II. PROJECT DESCRIPTION

PROJECT DESCRIPTIONS SPECIFIC TO EACH PROJECT WILL BE PROVIDED AS PART OF REQUEST FOR SERVICES)

III. WORK ELEMENTS

A. Determine Area of Potential Effect

Using all pertinent information supplied with the Notice to Proceed, establish the project's Area of Potential Effect (APE) as defined by and required by 36 CFR §800.2 and §800.4.

1. The APE will encompass the area in which affects related to the project can reasonably be expected. The proposed APE will be discussed with NJDOT-BEA's project managers and verbally approved by them prior to the commencement of further work.
2. The APE will be treated as the study area for purposes of all activities related to this study. The Consultant will undertake no work efforts relating to property outside the APE without specific direction from NJDOT-BES.

B. Background Research

1. Identify properties listed in, nominated to, or previously determined eligible for inclusion in the National or State Registers of Historic Places. Identify properties included in New Jersey Historic Site Inventories, the Historic American Buildings Survey, Historic American Engineering Record, and/or any pertinent local or county inventories of historic/cultural resources.
2. Identify properties included in cultural resource surveys on file at the State Historic Preservation Office, the Pinelands Commission if appropriate, and appropriate County or Municipal offices concerned with historic preservation and/or planning.
3. Conduct a thorough search of pertinent architectural and historical literature to identify known historic structures in the project area.
4. Consult appropriate primary and secondary source materials pertaining to the project area in general, and, specifically, to the APE, including maps, wills, deeds, court records, diaries, account books, published historical accounts and oral histories.
5. Interview knowledgeable professional and avocational historians and/or architectural historians who may have knowledge of the project area.
6. Interview local and county officials having jurisdiction over cultural resources to identify properties of local or regional significance.

C. Field Activities

1. Without duplicating any work which was identified during Background Research, and which met acceptable professional standards, conduct a reconnaissance of the entire project area to identify all structures of local, state or national significance which appear to meet at least one of the Register's Criteria.

2. Record verbally, photographically, and (where appropriate) graphically, all structures identified in C.1. above.
3. Perform detailed deed searches where necessary to understand more fully the significance of a structure. As this work may be time consuming, the need for this work should be discussed with NJDOT-BES prior to initiation.
4. Compile comprehensive field notes in the course of performing the above activities and complete NJ Historic Preservation Office (NJ HPO) survey forms. The survey form used for recording information should be appropriate to the type of historic property encountered during the survey.

D. Analysis

1. Using all data acquired through Background Research and Field Activities, determine which structures in the project area, if any, are included in, have been formally determined eligible for inclusion in, have been nominated to or which, in the Consultant's opinion, are eligible for inclusion in the National Register of Historic Places.
2. For each property identified as being listed in or eligible for listing in the National Register, apply the **Criteria of Effect and Adverse Effect**.
3. For each property which will be adversely affected by the project, recommend suitable measures to avoid or mitigate adverse effects. Recommendations should be made by individuals having the necessary professional expertise in the applicable disciplines and should be thoroughly discussed with NJDOT Project Management staff and, if applicable, the design consultant(s) for the project to determine the feasibility of each recommendation prior to including them in the report.

E. Report Preparation

A concise report describing the survey and the results will be prepared in accordance with current guidelines promulgated by the NJ HPO and any direction provided by the NJDOT. The report will provide the basis for consultation with the SHPO and others, and should be of sufficient depth and length to allow for an independent evaluation of eligibility and effect. **THE CONSULTANT SHOULD NOT INDEPENDENTLY CONSULT WITH THE SHPO REGARDING ELIGIBILITY OF SITES OR THE ASSESSMENT OF EFFECTS.** Such consultation shall only be initiated at the direction of NJDOT-DOT.

At a minimum, the report will contain the following elements:

Abstract

Introduction

Project Description

Description of Study Methodology

Results

-Background history of the project area, including noteworthy individuals and events, illustrated by historic maps as appropriate.

-Descriptive overview/characterization of the project area at present, illustrated by streetscape photographs as appropriate; possible topics may include land

use, development patterns, and prevalent building type.

Conclusions

-Assessments of the eligibility for listing in the National Register of Historic Places of each property evaluated and of the effects of the proposed construction for each property evaluated as being eligible for listing or listed in the National Register.

Appendix

-Letters

-USGS quadrangle map showing the study area, with properties referenced in the report noted on the map

Vitae

All measurements shall be recorded using metric terminology; English system equivalents may be recorded parenthetically. Appropriate locational data should be recorded using Global Positioning System (GPS) technology when possible. Pertinent resource data must be submitted in the appropriate format once a GIS system is sufficiently defined by the SHPO.

Three draft copies of the completed report, one with original photos, should be forwarded to the NJDOT-BES project manager for review. Upon approval, five paper copies of the final report are required, each with original photographs. One of the five final reports will be left entirely unbound. A 3-1/2" disk copy will also be supplied which will be formatted at least in WordPerfect 6.0 for Windows, Microsoft Word or other word processing program as approved by NJDOT-BES. Field notes should be maintained for later use. All photographic negatives and original graphics used in the final report will become the property of the State and will be submitted with the final report.

If significant resources are identified, a brief, non-technical account of the results of the study may be required.

F. Documentation/Mitigation

When directed, prepare documentation to support the Section 106 consultation process (including solicitation of formal determinations of eligibility) and undertake mitigation activities as required. Such activities will only be initiated at the written direction of the NJDOT project manager or official designee. Explicit instructions for this work will be provided on a project specific basis.

IV. OTHER REQUIREMENTS AND CONDITIONS

A. Permission to publish and/or publicize findings - If the Consultant expects to publish all or part of the Final Report, deliver oral presentations, or publish papers/articles involving data derived from the work, (s)he must submit a written request for permission to do so to the NJDOT-BES project manager. The request should indicate the venue in which the information will appear (article, oral presentation, etc.), the expected date the information will be presented and an outline or abstract of the presentation. At such time as a written document is completed, a copy of that will also be submitted to the NJDOT-BES project manager

B. The consultant will refer all inquiries from news organizations to NJDOT, and will release no information relating to the survey to any news organizations without prior approval by the NJDOT.

SCOPE OF WORK ARCHEOLOGICAL SURVEY

I. INTRODUCTION

The services requested in this Scope of Work are pursuant to the instructions and intents set forth by Section 101(b)(4) of the National Environmental Policy Act 1969; Section 1(3) and 2(b) of Executive Order 11593; Section 106 of the National Historic Preservation Act as amended; 23 CFR 771, as amended; the appropriate guidelines developed by the Advisory Council on Historic Preservation; and the amended Procedures for the Protection of Historic and Cultural Properties as set forth in 36 CFR Part 800.

All work carried out pursuant to this scope of work will be performed by or under the direct supervision of a person or persons meeting the Secretary of the Interior's Qualifications Standards (48 FR 44738-9) for the discipline(s) required to complete the necessary work. All information submitted in the survey report will be sufficient for a reviewer to independently make a determination of the eligibility for listing in the National Register of Historic Places of all significant archaeological properties contained within the Area of Potential Effects and evaluate the effects of the proposed construction upon any National Register listed or eligible sites. Significance will be evaluated in accordance with the Criteria for Inclusion in the National Register of Historic Places (36 CFR §60.4). Effects will be determined in accordance with the Criteria of Effect and Adverse Effect as contained in 36 CFR §800.9.

The investigation will incorporate the tasks enumerated in Sections III-XI, as well as satisfying the above-listed criteria. All work conducted in a response to this SOW, should be conducted in response to the latest guidelines issued by the New Jersey Historic Preservation Office (NJ HPO); research topics identified by the NJ HPO and others must be addressed using appropriate field methods and research techniques; and reports must be brief and in accordance with guidance prepared by the NJ HPO and any supplementary direction provided by the NJDOT, but commensurate with the level of work conducted.

II. PROJECT DESCRIPTION

(DESCRIPTIONS SPECIFIC TO EACH PROJECT WILL BE PROVIDED AS PART OF THE REQUEST FOR SERVICES.)

III. DETERMINATION OF THE AREA OF POTENTIAL EFFECT

Using all pertinent information supplied with the Notice to Proceed, establish the project's Area of Potential Effect (APE) as defined by and required by 36 CFR §800.2 and §800.4.

- A. The APE will encompass the area in which affects related to the project can reasonably be expected. This may differ for historic architectural and archeological studies. The proposed APE will be discussed with the NJDOT-Bureau of Environmental Services (BES) project managers and verbally approved by them prior to the commencement of further work.
- B. The APE will be treated as the study area for the purposes of all activities related to this study. The Consultant will undertake no work efforts relating to property outside the APE without specific direction from NJDOT-BES.

IV. BACKGROUND RESEARCH

- A. Identify properties listed in, nominated to, or eligible for listing in the National Register of Historic Places. Also, note those properties included in the NJ Historic Sites Inventory, the Historic American Buildings Survey, the Historic American Engineering Record Catalogs, and any pertinent government inventories (including Pinelands where applicable).
- B. Conduct a thorough search of the pertinent archaeological literature (including standard and recent publications and cultural resource survey reports available at the offices of the SHPO and NJ State Museum) to identify known historic and prehistoric sites within and in proximity to the APE.
- C. Review "As Built" and other design and construction plans on file in the NJDOT, Engineering and Operations Building (sixth floor) 1035 Parkway Avenue, Trenton, NJ, County Engineer's Offices and other locales in order to identify the locations of razed structures and areas where previous construction has been sufficient to minimize the possibility that intact cultural resources remain.
- D. Consult appropriate primary and secondary source materials pertaining to the history, prehistory, ethnohistory, geology, geography, and ecology of the area as needed to place any materials recovered within their natural and cultural contexts.
- E. Consult professional and avocational archaeologists who are knowledgeable about the area as appropriate.
- F. Consult local officials including representatives of local historical societies having jurisdiction over or knowledge of cultural resources if preliminary research indicates this endeavor may be productive.

V. FIELD ACTIVITIES

- A. Conduct a thorough pedestrian survey of the APE. In accordance with current NJ HPO guidelines, if warranted, undertake sufficient subsurface testing to identify, determine the nature of, and provide preliminary evaluations of archaeological resources within the APE. The Consultant is cautioned that field excavations may not always be required. Work should be undertaken in a phased manner. The initial phase will focus on presence/absence of archeological materials. If materials are

recovered, the Consultant will inform the NJDOT-BES project manager. If necessary, subsequent testing will focus on determining if significant, National Register eligible resources lie within the APE, and defining the boundaries of such sites within the APE.

- B. Data should be collected and recorded accurately and systematically (measurements are to be in metric units; English unit equivalents maybe provided parenthetically).
1. Clear, complete, and systematic descriptions of all field operations and observations should be recorded on a daily basis. Standard descriptors like soil color indices and soil texture measures should be used whenever possible.
 2. Soil interpretations must accompany soil profiles. This includes, to the maximum extent possible, identifying each stratum as to whether it is fill, undisturbed, etc. Also, narrative discussions should include the rationale for closing the various tests (e.g., sterile soil stratigraphically below the culture bearing strata).
 3. Data should be recorded in a manner compatible with systems used by state and federal agencies who manage archaeological data. This includes recording appropriate locational data using Global Positioning System (GPS) technology when possible and pertinent resource data in an appropriate format once a Geographic Information System (GIS) is sufficiently defined by the NJ HPO. Information in these forms should have the maximum applicability to future studies and planning efforts.
 4. Data collection procedures should preserve the research values of the recovered materials.
 5. Resources should be described in sufficient detail to permit an accurate and objective evaluation of significance and to allow a project reviewer to formulate an independent evaluation of eligibility for listing in the National Register. A standard recording format should be used for the survey and adapted to the particular needs of the specific survey area. Narrative description should supplement the form where more detail is necessary. To facilitate regional computer coding, processing of site data, and comparison of results, where possible, the format and terminology should be compatible with other surveys in the same cultural region.
- C. To the extent possible, archaeological resources should be identified as to temporal and cultural affiliation; and additional attributes relevant to research design and management interests, such as function, size, structural components, duration and intensity of occupation, condition, etc., should also be recorded. Since archaeological resources are sometimes difficult and costly to revisit, it is cost-effective to identify relevant attributes during the initial survey.

- D. An accurate map should be made of each resource. These should be drawn to scale showing site boundaries, current land use, extant archaeological and natural features, the location of survey transects or sample quadrats, collection and sampling areas and units, and loci of major artifacts collected. Photographs and slides should be taken whenever such records would be of value for archival or analytic purposes, or as an aid in revisiting the site or areas within the site where testing or collecting was carried out. Photographs are necessary when documenting resources for nomination to the National Register of Historic Places.
- E. On occasion, obstacles to effective survey may be encountered. In such cases, the reasons for failure to survey should be explicitly stated. As a means of providing an estimate of reliability of the survey, it is equally important to record those areas which were surveyed but were devoid of archaeological resources.
- F. Areas disturbed by field activities should be returned as nearly as possible to original condition (e.g. backfill all test units, replace sod).

VI. ANALYSIS AND DISPOSITION OF DATA

- A. Using economical techniques to recover appropriate data, clean all recovered material and employ preservation measures as necessary. Conduct appropriate analysis.
 - 1. Materials prone to degradation (e.g. floral and faunal remains) should be treated to assure stability. Any unstabilized ferrous, wooden, or other artifacts prone to deterioration should be described fully, photographed if necessary, and discarded. Artifact inventories should clearly indicate what materials have been discarded.
 - 2. Lithics (e.g. bifaces, cores, useable flakes) which could be analyzed for use-wear as part of the study or in the future must be carefully cleaned and bagged separately, both in the field and in preparation for storage, to ensure against producing additional micro-damage on tool edges. This would include all lithics having well-preserved surfaces which are suitable for microwear analysis.
- B. Label all materials as to provenience; and, where applicable, with NJ State Museum-issued Smithsonian numbers.
- C. Analysis should describe the material collected or recovered; compare it with similar material, evaluate its association with other material and interpret these observations. **Analysis should result in recommendations about the National Register eligibility of any sites encountered. Findings of eligibility should clearly indicate what important new information may be recovered from further excavation of the site(s). In addition, if National Register eligible or listed sites are identified, after application of the Criteria of Effect and Adverse Effect, the Consultant will recommend an appropriate finding of effect, as well as mitigation alternatives.** Such recommendations should be made by individuals

having the necessary professional expertise in the applicable disciplines and should be thoroughly discussed with NJDOT Project Management staff and, if applicable, the design consultant(s) for the project to determine the feasibility of each recommendation prior to including them in the report. If the sites cannot be avoided, the Consultant should include a proposed data recovery plan describing anticipated research foci and appropriate techniques for addressing specific questions as an appendix to the report.

1. The types of analyses employed during the conduct of investigations should provide information needed to address the designated research problems and should be conducted using economical techniques.
 2. The samples of materials to be analyzed should be justified by statistical or other valid information gathering techniques. Detailed analysis should be undertaken on the number of specimens necessary to address the designated research problems.
- D. Prior to packing artifacts for shipment, the artifact assemblage will be subjected to a strict culling process designed to eliminate artifacts which do not contribute or contribute only minimally to an understanding of the site(s) from the collection. Examples of culled material might include material of recent derivation, selected brick, architectural glass and other building materials; slag and coal; shell; etc. All artifacts must be packed in two-piece, acid-free rigid mailing boxes, without metal fasteners. Organized by provenience, the boxes must be fully labeled to facilitate catalogue cross referencing and identification. Culled or discarded items are to be clearly indicated on the inventory.
- E. Unless NJDOT-BES gives written approval or direction for an alternate disposition, all recovered cultural material and original field records should be transmitted to NJDOT-BEA at the time of the Final Report submission.
- F. A copy of all field notes/records must be submitted with the final report.

VII. COORDINATION WITH NJDOT AND OTHERS

- A. Notification of Property Owners and Others
1. NJDOT-BES will provide the Consultant with a general letter of introduction upon request.
 2. If so requested by the consultant, NJDOT will provide written notice to individual property owners informing them that the survey team may enter onto their property to conduct the survey in accordance with NJ statutes. The Consultant must provide the name, address, and lot and block numbers for each property owner to be so notified and allow reasonable time for this notification.
 3. The Consultant is urged to contact appropriate utility authorities to determine if

buried utilities lie within the APE and, if so, to identify their precise locations.

- B. At the conclusion of the initial survey and/or prior to the preparation of a report, the Consultant will contact the NJDOT-BES project manager to determine if it would be beneficial to meet with NJDOT representatives to present the results of the investigations.
- C. A 3-1/2" disk copy will also be supplied to the NJDOT with the draft report which will be formatted at least in WordPerfect 6.0 for Windows, Microsoft Word or other word processing program as approved by NJDOT-BES. If substantial revisions are made in the preparation of a final report, the final submission should also include a copy of the text in disk format.

VIII. FINAL REPORT FORMAT AND CONTENT

The final report of the investigation should be prepared in accordance with the latest guidelines issued by the NJ HPO and any supplementary direction provided by NJDOT. When applicable, the standards of the New Jersey Pinelands Commission should be used in report preparation. **The length and detail of the report should be commensurate with the data derived from the study.**

Photographs, maps, plans, drawings, and text must be clear and **concise**. Maps containing sensitive site location information should be bound separately as an Appendix. Photographs should be of representative test pits and significant cultural remains and features, as well as informative views of site areas and the general project area. Profiles and plan views of all significant features, test units, and posthole tests should be included. Also, a complete inventory of all artifacts recovered based on a consistent ordering of types, together with appropriate provenience data should be included.

Three draft copies of the completed report, one with original photos, should be forwarded to the NJDOT-BES project manager for review. Upon approval, five copies of the completed report should be forwarded to NJDOT-BES (all with original photographs; one unbound). Disk copies of the text should be supplied as described in the preceding. Negatives of all photographs and copies of slides utilized in the report must also be submitted with the Final Report.

If significant sites are identified, a brief, non-technical account of the results of the study may be required.

If the Consultant expects to publish all or part of the Final Report, deliver oral presentations, or publish papers/articles involving data derived from the work, (s)he must submit a written request for permission to do so to the NJDOT-BES project manager. The request should indicate the venue in which the information will appear (article, oral presentation, etc.), the expected date the information will be presented and an outline or abstract of the presentation. At such time as a written document is completed, a copy of that will also be submitted to the NJDOT-BES project manager.

The consultant will refer all inquiries from news organizations to NJDOT, and will release

no information relating to the survey to any news organizations without prior approval by the NJDOT.

IX. Documentation/Mitigation

When directed, the Consultant shall prepare documentation to support the Section 106 consultation process (including solicitation of formal determinations of eligibility) and undertake mitigation activities required. Such activities will only be initiated at the written direction of the NJDOT project manager or his/her designee. Explicit instructions for this work will be provided on a project specific basis.

**WIRELESS COMMUNICATIONS SITES
SECTION 106 DATA SHEET**

Project Number:

Project Name

USGS Quad:

Munic./County:

Description of Project:

Area of Potential Effects::

Description of Transportation Facility:

Local Land Use:

Topographic Setting:

800.4 Identification of Properties

The following information is derived from mapped site and survey information on file at the NJ Historic Preservation Office.

Previous Surveys Proximate to the Site
List:

Historic Buildings/Structures within Area of Potential Effects
List:

Historic District(s) within Area of Potential Effects
List:

No Properties

800.5 Assessment of Effects

Features of Viewshed:

Section 106 Recommendation:

State Historic Preservation Office Section 106 Consultation Comments

- I concur with the findings presented in the preceding.
- I do not concur for the following reasons:

Dorothy P. Guzzo
Deputy State Historic Preservation Officer

Date

A FIVE-MINUTE LOOK AT SECTION 106 REVIEW

About the Section 106 review process

What is Section 106 review? This term refers to the Federal review process designed to ensure that historic properties are considered during Federal project planning and execution. The review process is administered by the Advisory Council on Historic Preservation, an independent Federal agency.

Who established Section 106? The Congress did, as part of the National Historic Preservation Act of 1966 (NHPA). NHPA, strengthened and expanded by several subsequent amendments, today has become the cornerstone of this country's historic preservation policy.

Why was Section 106 created? NHPA was enacted because of public concern that so many of our Nation's historic resources were not receiving adequate attention as the Government sponsored much-needed public works projects. In the 1960s, Federal preservation law applied only to a handful of nationally significant properties, and Congress recognized that new legislation was needed to protect the many other historic properties that were being harmed by Federal activities.

What does NHPA say? Section 106 of NHPA requires that every Federal agency "take into account" how each of its undertakings could affect historic properties. An agency must also afford the Council a reasonable opportunity to comment on the agency's project.

What is a Federal "undertaking"? This term includes a broad range of Federal activities: construction, rehabilitation and repair projects, demolition, licenses, permits, loans, loan guarantees, grants, Federal property transfers, and many other types of Federal involvement. Whenever one of these activities affects a historic property, the sponsoring agency is obligated to seek Council comments.

What is a historic property? For purposes of Section 106, any property listed in or eligible for the National Register of Historic Places is considered historic.

The National Register is this country's basic inventory of historic resources and is maintained by the Secretary of the Interior. The list includes buildings, structures, objects, sites, districts, and archeological resources. The listed properties are not just of nationwide importance; most are significant primarily at the State or local level. It is important to note that the protections of Section 106 extend to properties that possess significance but have not yet been listed or formally determined eligible for listing. Even properties that have not yet been discovered (such as archeological properties), but that possess significance, are subject to Section 106 review.

Figure 1: A brief look at Section 106 review

How does Section 106 review work?

The standard review process is spelled out in Federal regulations issued by the Advisory Council on Historic Preservation. Entitled "Protection of Historic Properties," the regulations appear in the U.S. Code of Federal Regulations at 36 CFR Part 800. The process involves five basic steps, as follows:

Step 1: Identify and evaluate historic properties

The Federal agency responsible for an undertaking begins by identifying the historic properties the undertaking may affect. To do this, the agency first reviews background information and consults with the State Historic Preservation Officer (SHPO) and others who may know about historic properties in the area. Based on this review, the agency determines what additional surveys or other field studies may be needed, and conducts such studies.

If properties, that is, districts, sites, buildings, structures, or objects, are found that may be eligible for inclusion in the National Register of Historic Places, but have not yet been included in the Register, the agency evaluates them against criteria published by the National Park Service, which maintains the Register. This evaluation is carried out in consultation with the SHPO, and if questions arise about the eligibility of a given property, the agency may seek a formal determination of eligibility from the Secretary of the Interior. If a property has already been included in the National Register, of course, further evaluation is not ordinarily necessary. Section 106 review gives equal treatment to properties that have already been included in the Register and those that are eligible for inclusion.

Step 2: Assess effects

If historic properties, that is, properties included in or eligible for inclusion in the National Register, are found, the agency then assesses what effect its undertaking will have on them. Again, the agency works with the SHPO, and considers the views of others. The agency makes its assessment based on criteria found in the Council's regulations, and can make one of three determinations:

- **No effect:** the undertaking will not affect historic properties.
- **No adverse effect:** the undertaking will affect one or more historic properties, but the effect will not be harmful.
- **Adverse effect:** the undertaking will harm one or more historic properties.

Step 3: Consultation

If an adverse effect will occur, the agency consults with the SHPO and others in an effort to find ways to make the undertaking less harmful. Others who are consulted, under various circumstances, may include local governments, Indian tribes, property owners, other members of the public, and the Council. Consultation is designed to result in a Memorandum of Agreement (MOA) which outlines measures agreed upon that the agency will take to reduce, avoid, or mitigate the adverse effect. In some cases the consulting parties may agree that no such measures are available, but that the adverse effects must be accepted in the public interest.

If consultation proves unproductive, the agency or the SHPO, or the Council itself, may terminate consultation. The agency must submit appropriate documentation to the Council and request the Council's written comments.

Step 4: Council comment

The Council may comment during step 3 of the process, by participating in consultation and signing the resulting MOA. Otherwise, the agency obtains Council comment by submitting the MOA to the Council for review and acceptance. The Council can accept the MOA, request changes, or opt to issue written comments. If consultation was terminated, the Council issues its written comments directly to the agency head, as the agency had requested.

Step 5: Proceed

If an MOA is executed, the agency proceeds with its undertaking under the terms of the MOA. In the absence of an MOA, the agency head must take into account the Council's written comments in deciding whether and how to proceed.

Alternative approaches

The Section 106 regulations also spell out three alternative means of complying with Section 106. These are:

- **Programmatic Agreements** among an agency, the Council, one or more SHPOs, and others.
- **Counterpart regulations** developed by an agency and approved by the Council.
- **An agreement between the Council and a State** which substitutes a State review system for the standard Section 106 review process.

About the Council

What is the Advisory Council on Historic Preservation? The 20-member Council is composed of a chairman, vice chairman, 6 other private citizen members, a governor, and a mayor—all appointed by the President of the United States. The Council also includes the Secretaries of the Interior and Agriculture, the heads of four Federal agencies designated by the President, the Architect of the Capitol, the chairman of the National Trust for Historic Preservation, and the president of the National Conference of State Historic Preservation Officers. The Council members usually meet four times during the year. Day-to-day business of the Council involving Section 106 review is conducted by an executive director and a professional staff of historians, architects, archeologists, planners, lawyers, and administrative personnel.

Section 106 participants

Who initiates Section 106 review? The Federal agency involved in the proposed project or activity is responsible for initiating and completing the Section 106 review process. Under certain circumstances, local governmental bodies may act as the responsible agency. The agency works with the State Historic Preservation Officer (an official appointed in each State or territory to administer the national historic preservation program) and the Council to do so. In this fact sheet, the term "agency" is used to mean the responsible unit of government, be it Federal or local. There can be other participants in Section 106 review as well. At times, local governments, representatives of Indian tribes, applicants for Federal grants, licenses or permits, and others may join in the review process when it affects their interests or activities.

How long does Section 106 review take? The timetable for Steps 1 through 3 (identification through consultation) are up to the agency, as the Council is not typically involved at this point. Once the agency submits a signed MOA (with needed documentation) for Council review, that review can take up to 30 days. If there is no MOA, the agency can request issuance of Council comments within 60 days of when the Council receives required documentation.

For more information

Where is more information available? This brief look at Section 106 review cannot tell the whole story. For complete information about the Council's review process, consult the Council's regulations at 36 CFR Part 800, published September 2, 1986. [51 FR 31115] The Council has available without charge an annotated version of its regulations, which aids understanding of the regulatory language, as well as a booklet entitled *Section 106, Step-by-Step*, which provides a more detailed introductory look at the review process. A complete list of publications in the "Working with Section 106" series is available from the Council.

For easy-to-understand training on Section 106 review, the Council offers a 3-day course, "Introduction to Federal Projects and Historic Preservation Law," which is offered in many locations around the country each year. The course is designed for the Section 106 novice and explains, step-by-step, what actions are required by Federal, State, and local officials to meet the requirements of the law.

For more information, please write the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW, Suite 809, Washington, DC 20004. Telephone: (202) 606-8503 (executive offices) and (202) 606-8505 (Section 106 review and training offices).

Revised May 1994



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection
DIVISION OF PARKS AND FORESTRY
HISTORIC PRESERVATION OFFICE
CN-404

Robert C. Shinn, Jr.
Commissioner

TRENTON, N.J. 08625-0404
TEL: (609) 292-2023
FAX: (609) 984-0578

HISTORIC PRESERVATION OFFICE
PROJECT INFORMATION REQUEST FORM

PROJECT _____

HPO PROJECT CONTACT _____ DATE OF REQUEST _____

The Historic Preservation Office needs to receive the following information in order to review your project. If you have already submitted project information to the Office, additional information should be submitted for those areas which are checked. If you have any questions regarding the information requested, please contact the Historic Preservation Office project contact. FAXED information is not acceptable.

The formal project title (and short description by which it is known).

Any official project identification numbers.

The county and municipality where the project is located.

Project neighborhood location and street address.

U.S.G.S. Topographic Quadrangle maps and sheet titles, illustrating the project location and surrounding area.

The project location should be clearly and accurately delineated on the U.S.G.S. quadrangle sheet, and if appropriate, other map sources of equivalent accuracy and scale. As appropriate, a photocopied 8 1/2 inch by 11 inch map section may be used; however, the reproduction must be very sharp. The title of the quadrangle sheet and date of the edition must be included.

The federal agency (and "program") funding, licensing, permitting, reviewing, or undertaking the project.

The names and addresses of State, Federal, or other project sponsors.

Other source(s) of project funds.

Project manager or contact person, address, and telephone number.

The name(s) of the administrative official(s) and address(es) of the project's municipality or county (e.g. the mayor or other municipal official who may be involved with the review or implementation of the project, and municipal contacts for historic preservation).

Names and addresses of historic preservation consultant or other pertinent project consultants (e.g. engineering, environmental, or planning consultants).

Previous related projects or project portions, and anticipated sequels to this project or project phase.

Project schedule, critical dates.

A narrative project description and detailed project plans: describing and illustrating the project including its areal extent, whether razing existing buildings or structures would be part of the project, and a description of related activities associated with the project (for example, construction of access roads or paved parking areas, the locations of construction laydown or equipment storage areas).

A description of the project site's natural environment including terrain, on-site drainages, soil types, and vegetation.

A description of the project site as it exists today and previous uses of this piece of land, providing information as far back in history and as well documented as possible. This should include a detailed description of the existing and previous on-site buildings and structures, paved areas, and other information to provide a description of the current and former site conditions particularly ground disturbance. The description should be accompanied by a detailed site plan illustrating the project, as well as any important or notable buildings and landscape features.

A discussion of representative buildings in the project vicinity including their current and former uses and approximate dates of construction. For buildings older than fifty years and visible from the project site, clear

color or black and white photographs (3" by 5" or larger) and descriptions are necessary. Polaroid photographs are not acceptable. If there are many older buildings (as in a streetscape), they may be grouped in sets of two or three, provided that each is clearly visible. Each print should be captioned and numbered in a continuous sequence. A sketch map of the project area should be keyed to the photographs to illustrate the location and orientation of the camera for each.

A set of clear photographs, 3" by 5" or larger (Polaroid photographs are not acceptable):

- a. taken from outside the project site looking inward to illustrate ground conditions and on-site buildings, structures, and landscape elements, etc; and
- b. taken on-site looking outward to illustrate the project vicinity, e.g. in the four cardinal directions or their equivalent.

Each print should be captioned and numbered. As above, the photographs should be numbered, and the sketch map of the project area should be keyed to the photographs to illustrate the location and orientation of the camera for each.

A detailed statement of the likely effects of the project on historic sites, landscapes, and buildings, and archaeological sites, both on the project site and in its vicinity must be included. If you believe that your project will have no effect on properties listed in or eligible for listing in the National Register of Historic Places, this should be stated and justified in your submission.

Additional information requested or comments

identification

of each property within the APE that is listed or potentially eligible for listing on the National Register. At a minimum, such documentation shall include:

1. Exterior building and neighborhood/streetscape context photographs, along with a "simulated" photograph showing any tower as it would appear in a primary view, keyed to a location map;
2. Information on whether or not the property and/or district meets the criteria of the National Register;
3. USGS Quadrangle Map showing the location of the property within the APE.
4. Boundaries of the APE.
5. A completed site survey form available from the New Jersey Historic Preservation Office.

APPENDIX A

General Guidance for Determining the Area for Potential Effects (APE)

Definition:

"Area of Potential Effects", or APE, is the geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

The APE is not of uniform size. Instead, it is an area of varying size whose boundaries are determined by many factors.

Reason for Determining the APE:

The APE is the area to be surveyed for historic properties. It is the area within which compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, must be undertaken.

Changes to the APE:

The APE will change if the proposed project changes or if site locations are shifted, added, or deleted. For instance, if a proposed tower's height is increased, then the area of potential effects should be reexamined to determine whether or not it should be increased.

Who Determines the APE:

For the purposes of this Programmatic Agreement among the Advisory Council on Historic Preservation, the Federal Communications Commission, and the New Jersey State Historic Preservation Office, the APE is determined by the Licensee in consultation with their historic preservation professional.

Factors Considered when Determining the Boundaries of the APE

- * Natural boundaries such as rivers, oceans or bays, mountains or hills, canyons or valleys, changes in elevation, etc.
- * Modern development, i.e., landscapes that have already been compromised
- * Viewsheds

Suggested steps for determining the APE:

- * Review project plans and specifications to determine the nature and extent of the project (e.g. amount of ground disturbance, height of tower, construction staging areas, material stock pile areas, etc.)
- * Field review general areas to identify topography and other factors that may alter the boundaries of the APE.
- * Sketch the APE on U.S. Geological Survey Topographic maps.
- * Refine the APE as needed as the project progresses.

Minimum Requirements for all APEs:

The APE needs to include all areas that may be potentially affected by a proposed undertaking, including alternative project locations. This may include discontinuous areas that represent off-site areas for material storage, wetland mitigation, etc.

Documenting the APE:

The APE should be documented on a map. A U.S. Geological Survey topographic map is the most useful. The map should be supplemented with a verbal justification for the proposed boundaries of the APE.

APPENDIX B

Criteria of Effect and Adverse Effect (36 CFR Part 800.9)

Criteria of Effect

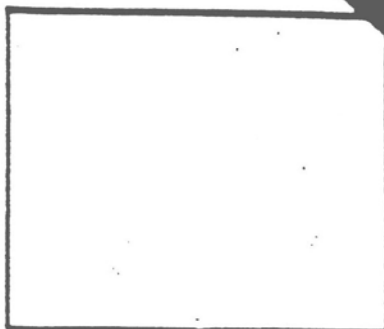
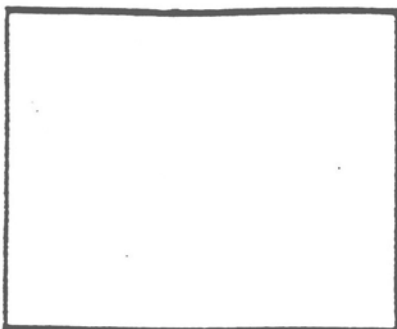
(a) An undertaking has an effect on a historic property when the undertaking may alter characteristics of the property that may qualify the property for inclusion in the National Register. For the purpose of determining effect, alteration to features of the property's location, setting or use may be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

Criteria of Adverse Effect

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

- (1) Physical destruction, damage, or alteration of all or part of the property;
- (2) Isolation of the property from or alteration of the character of the property's setting when that character contributes to the property's qualification for the National Register;
- (3) Introduction of visible, audible, or atmospheric elements that are out of character with the property or alter its setting;
- (4) Neglect of a property resulting in its deterioration or destruction; and
- (5) Transfer, lease, or sale of the property.

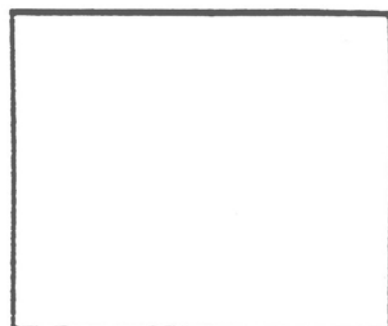
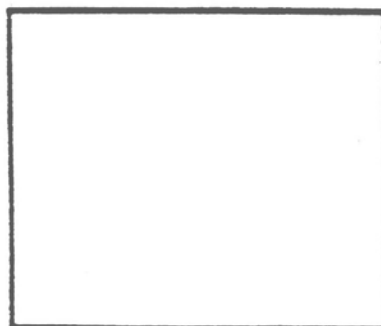
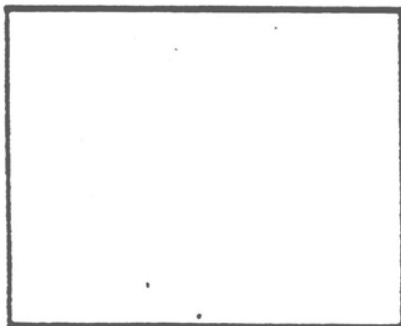
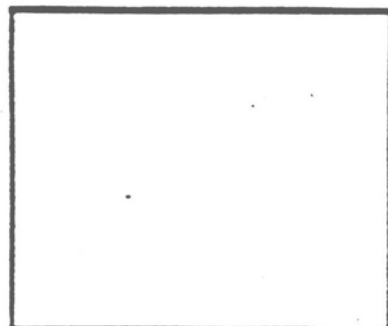
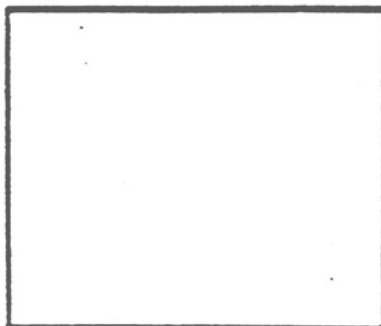
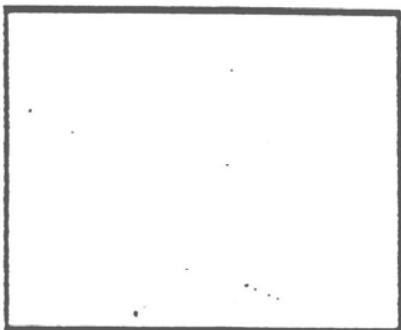
WORKING WITH
SECTION 106



36 CFR Part 800:

Protection of Historic Properties

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



Advisory Council on Historic Preservation

Effective October 1, 1986

36 CFR PART 800: PROTECTION OF HISTORIC PROPERTIES

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

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

SUBPART A—BACKGROUND AND POLICY

800.1 Authorities, purposes, and participants.

What §106 requires of Federal agencies

(a) **Authorities.** Section 106 of the National Historic Preservation Act requires a Federal agency head with jurisdiction over a Federal, federally assisted, or federally licensed undertaking to take into account the effects of the agency's undertakings on properties included in or eligible for the National Register of Historic Places and, prior to approval of an undertaking, to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. Section 110(f) of the Act requires that Federal agency heads, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking and, prior to approval of such undertaking; afford the Council a reasonable opportunity to comment. These regulations define the process used by a Federal agency to meet these responsibilities, commonly called the Section 106 process.

What §110(f) requires of Federal agencies

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

Accommodation of historic preservation concerns and needs of Federal undertakings

Early integration of §106 into project planning

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

§106 participants

Consulting parties

Federal agency's general responsibilities

SHPO's general responsibilities

Council's general responsibilities

Interested persons' participation

Local governments' participation

(c) Participants in the Section 106 process.

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

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

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

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

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

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

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

Federal applicants' participation

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

Indian tribes' participation

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

Public participation

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

Definitions

800.2 Definitions.

"Act"

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

"Agency Official"

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

"Area of potential effects"

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

"Council"

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

"Historic property"

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

"Indian lands"

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

"Indian tribe"

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

"Interested person"

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

"Local government"

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

"National Historic Landmark"

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

"National Register"

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

"National Register Criteria"

(l) "National Register Criteria" means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR Part 60).

"Secretary"

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

"SHPO"

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

"Undertaking"

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

How the §106 process works

SUBPART B—THE SECTION 106 PROCESS

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

800.3 General.

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

Procedural flexibility

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

Timing of the §106 process

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

*Allowance for nondestructive
planning before the §106
process is completed*

Steps of the §106 process

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

Agency's location of historic properties in the project area

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

Agency/SHPO agreement about National Register eligibility of properties found

800.4 Identifying historic properties.

(a) Assessing information needs.

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

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

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

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

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

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

(c) Evaluating historical significance.

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

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

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

Disagreement about National Register eligibility of properties found

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

Agency's actions if no historic properties are found

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

Agency's actions if historic properties are found

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

Agency's assessment of project effects on historic properties found

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

Agency's use of Criteria of Effect

800.5 Assessing effects.

Agency's actions if no effect is found

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

Agency's use of Criteria of Adverse Effect

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

Agency's actions if effects are not adverse

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

(d) When the effect is not considered adverse.

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

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

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

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

Agency's actions if effects are adverse

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

Invitation to interested persons to join in consultation

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

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

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

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

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

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

Documentation needed for consultation

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

Public notification about consultation

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

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

(4) *Agreement.* If the Agency Official and the State Historic Preservation Officer agree upon how the effects will be taken into account, they shall execute a Memorandum of Agreement. When the Council participates in the consultation, it shall execute the Memorandum of Agreement along with the Agency Official and the State Historic Preservation Officer. When the Council has participated in consultation, the Memorandum of Agreement shall be submitted to the Council for comment in accordance with Section 800.6(a). As appropriate, the Agency Official, the State Historic Preservation Officer, and the Council, if participating, may agree to invite other consulting parties to concur in the agreement.

Amendments to MOA's

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

Ending consultation

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

800.6 Affording the Council an opportunity to comment.

Council review of an MOA

(a) Review of a Memorandum of Agreement.

Documentation for MOA review

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

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

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

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

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

Council comment, absent an MOA

(b) Comment when there is no agreement.

Documentation for Council comment, absent an MOA

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

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

How the Council provides comments, absent an MOA

Agency's response to Council comment

Failure to carry out terms of an MOA

Agency's consideration of Council comment

Agency actions that preempt reasonable opportunity for Council comment

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

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

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

(c) Response to Council comment.

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

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

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

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

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

(e) Public requests to the Council.

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

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

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

*Substitute review processes
developed by States for §106
review*

*Council review of a proposed
substitute State review process*

*SHPO/Council consultation
about a proposed substitute
State review process*

800.7 Agreements with States for Section 106 reviews.

(a) Establishment of State agreements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Agency's use of substitute State review processes

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

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

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

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

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

Monitoring or terminating substitute State review processes

(c) Monitoring and termination of State agreements.

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

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

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

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

800.8 Documentation requirements.

Documentation for finding of no adverse effect

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

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

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

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

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

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

*Documentation required for
consultation*

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

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

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

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

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

*Documentation required for
submitting a signed MOA for
Council review*

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

*Documentation required for
requesting written Council
comment, absent an MOA*

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

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

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

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

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

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

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

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

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

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

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

800.9 Criteria of Effect and Adverse Effect.

Criteria of Effect

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

Criteria of Adverse Effect

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

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

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

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

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

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

Exceptions to the Criteria of Adverse Effect

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

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

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

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

SUBPART C—SPECIAL PROVISIONS

Special agency requirements for National Historic Landmarks

800.10 Protecting National Historic Landmarks.

Section 110(f) of the Act requires that the Agency Official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in Sections 800.4 through 800.6 and give special consideration to protecting National Historic Landmarks as follows:

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

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

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

Discovery of historic properties after a project has begun

800.11 Properties discovered during implementation of an undertaking.

Prior agency planning for discoveries

(a) Planning for discoveries.

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

(b) Federal agency responsibilities.

(1) When an Agency Official has completed the Section 106 process and prepared a plan in accordance with Section 800.5, the Agency Official shall satisfy the requirements of Section 106 concerning properties discovered during implementation of an undertaking by following the plan.

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

(i) Comply with Section 800.6:

Agency responsibilities absent a plan for discoveries

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

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

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

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

(c) Council Comments.

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

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

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

Agency actions to determine National Register eligibility of newly discovered properties

(d) Other considerations.

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

Discovery of properties on Indian lands

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

Waiver of §106 requirements during disasters or declared emergencies

800.12 Emergency undertakings.

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

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

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

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

30-day timeframe for §106 waiver in disaster situations

Agency's use of Programmatic Agreements

800.13 Programmatic Agreements.

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

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

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

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

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

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

Examples of projects or programs suitable for Programmatic Agreements

Agency/Council consultation to reach a Programmatic Agreement

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

Public involvement in Programmatic Agreement consultation

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

Signatories of a Programmatic Agreement

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

Effect of a Programmatic Agreement

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

Public notification of a Programmatic Agreement

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

Failure to carry out terms of a Programmatic Agreement

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

Coordination of §106 with other authorities

800.14 Coordination with other authorities.

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

Coordination with NEPA environmental studies

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

Multipurpose determinations and agreements

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

Multipurpose studies and surveys

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

Coordinated public involvement

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

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

800.15 Counterpart regulations.

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



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FAX: (609) 984-0578

Robert C. Shinn, Jr.
Commissioner

Date: _____

Firm/Consultant: _____

Re: _____

The Historic Preservation Office (HPO) has received your request for technical assistance with historic and archaeological resources in your project area. Unfortunately, due to the excessive number of requests we receive daily, we are unable to personally assist you at this time. However, the HPO reference collections are available for your use by appointment. The HPO maintains several types of reference collections which are explained in the attached research instructions. After reviewing the attached information, you may schedule an appointment by calling (609) 292-2023. Our hours for research and scheduling appointments are 9:00 AM to 4:00 PM.

INSTRUCTIONS FOR RESEARCH AT THE HISTORIC PRESERVATION OFFICE

Appointments

Prospective visitors must schedule an appointment with the Historic Preservation Office (HPO) for use of the collections for several reasons. Work space for visitors is usually limited, so it is difficult for us to serve more than one visiting researcher at a time. Also, an HPO staffer must schedule time to be available to assist you. You will require assistance for your first several visits because each reference collection has its own unique organization, and each collection requires special care in handling during use. To schedule an appointment, please phone 609-292-2023, and ask to be transferred to a staff person who can work with you to schedule visitation. Our hours for research and scheduling appointments are 9:00 AM to 4:00 PM.

Photocopying

If you expect that you might need to do photocopying, please bring a check for payment. The HPO cannot accept cash payments and visiting researchers cannot remove photocopied materials prior to payment.

Principal Reference Materials

All resource documents maintained by the HPO are strictly reference materials and cannot be removed or checked out. Many of these documents are originals or one-of-a-kind, and need to be handled with care. The primary sets of resource documents are:

1. U.S.G.S. 7.5' topographic maps covering all of New Jersey with locations indicated for most architectural and archaeological properties listed in the National Register of Historic Places, listed in the New Jersey Register of Historic Places, and with opinions of eligibility.
2. U.S.G.S. 7.5' topographic maps covering all of New Jersey with locations indicated for most architectural and archaeological survey, evaluation, and treatment projects for which the HPO has received written reports.
3. Maps showing historic and archaeological sites identified in the Pinelands and by archaeological site surveys done earlier in the century.
4. A collection of the reports mentioned in #2 above, organized by county.

5. Reports, building/structure inventory forms, maps, and other information, generated by Historic Site Survey projects conducted with federal Historic Preservation Fund grant support through the HPO, organized by county and municipality.
6. Individual files for each property in New Jersey that is listed in the National Register of Historic Places and/or New Jersey Register of Historic Places. The office also maintains files of properties nominated to the Register but not completed or registered.
7. Historic Structure Reports, Preservation Plans, Historic American Building Survey documents related to State-owned historic sites, organized by State Park Service region.

When you visit the HPO to conduct research, you will be provided with a more detailed description of these and other research materials, how to access them, how to use and care for them, and how to reshelve/refile them when you complete your work. As you can see from the list above, you should have your study area plotted on U.S.G.S. 7.5' maps as an aid to identifying pertinent HPO reference materials. You should also know the counties and municipalities of your study areas. If your study area includes urban or suburban lands, you should also know Block and Lot numbers as well as street addresses.

If you have buildings or standing structures within your study area for which you wish to consult with one of the HPO architectural specialists regarding potential historic significance, you should bring photos of the building with you; you should also advise of your interest in consulting regarding historic architectural matters when you schedule your visit so that an architectural staffer will be available to assist you.

Please be aware that New Jersey's archaeological site records are maintained by the State Archaeologist at the New Jersey State Museum. To check for recorded archaeological sites in your study area, please contact: Ms. Karen Flinn, Bureau of Archaeology and Ethnology, New Jersey State Museum, 205 West State St, Trenton NJ 08625-0530 (phone (609) 292-8594).

Also, if your project is located within an area under the jurisdiction of the New Jersey Pinelands Commission, please be aware that you need to contact Barry Brady, Pinelands Commission, P.O. Box 7, New Lisbon NJ 08064 (phone

Pinelands Commission, P.O. Box 7, New Lisbon NJ 08064 (phone (609) 894-9342).. The Pinelands Commission maintains a comprehensive collection of information regarding historic and archaeological resources in the Pinelands.

Location of the HPO, Access by Car and Train, and Parking

Attached is a map of downtown Trenton showing the location of the building at 501 East State Street at the corner of South Clinton in which the HPO is situated on the fourth floor. This is just one of several buildings housing different divisions of the Department of Environmental Protection. This building is one block east from the main DEP building, and just one block from the downtown Trenton train station which is serviced by NJ Transit, SEPTA, and Amtrak. 501 East State Street and almost all HPO research files are accessible for those in wheelchairs.

If you are driving, there are several options for parking. The easiest, most secure (and also wheelchair accessible) parking is in a parking structure directly adjacent to our building; all-day parking costs about \$6.00. There is metered street parking near our building, but with a two-hour maximum. There is also pay parking several blocks away from our building near the train station.

TP:vp

C:\PRO\WD\FORMLET

WHO'S WHO IN THE HISTORIC PRESERVATION OFFICE?



State of New Jersey



Department of Environmental Protection



Division of Parks & Forestry



Historic Preservation Office

Have a question but not sure who to call?

- For information on how to list a property on the New Jersey and National Register, to inquire about an already listed property or receive information on the State Review Board Agenda,

Robert Craig
Susan Pringle
(609)

- For questions or advice with the Americans With Disabilities Act, the Investment Tax Credit, or the Historic Sites Council Agenda,

Daniel Saunders
984-0140

- For projects funded through the NJ Historic Trust or Housing and Urban Development,

Lysa Papazian
984-0140

- For general questions regarding transportation and planning issues, Municipal Land Use Law (MLUL) and local ordinances,

Charles Scott
292-2028

- Project specific inquiries related to transportation:

Andrea Tingey (bridges) 292-2028
Carl Nittinger (road projects) 292-2028
Kinney Clark (NJT rail lines and stations) 292-2028
Brian Geissler (NJT light rail) 292-2028

- For archaeology,

General archaeology and Survey Guidelines,

Michael Gregg 984-0140
633-2395

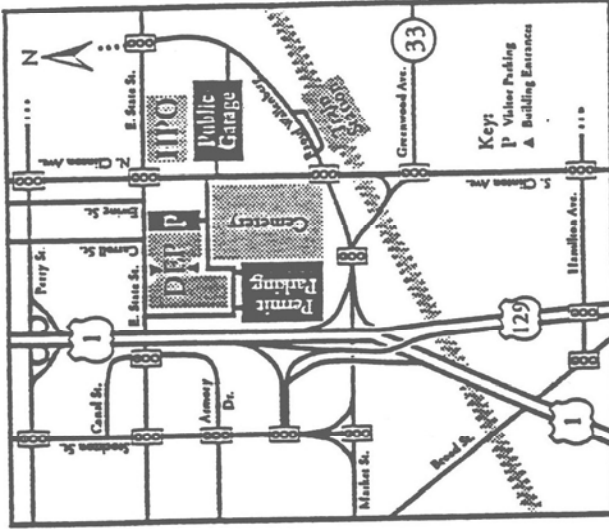
Canals, burials and cemeteries, and shipwreck management, underwater archaeology, landscapes,
Deborah Fimbel
984-0140

- To receive IHO publications or inquire about upcoming conferences or special events,

Colleen Hiatt
292-2023

- For Certified Local Government program, MLUL, local ordinances, grant applications, and suggestions for articles in the Historic Preservation Planning Bulletin,

George Chidley
292-2023



Directions from North Jersey:

Take the New Jersey Turnpike to exit 9 - New Brunswick to Route 1 South. Follow Route 1 South to Trenton and take the exit for Perry Street. At the top of the ramp make a right onto Perry Street, go over Route 1 and make a right onto Carroll Street. Follow that road one block to East State Street and make a left onto East State Street. HPO will be on your right at the corner of East State Street and Clinton Avenue.

Directions from South Jersey:

Take Interstate (I)-295 North to exit 56 - Bordentown, Route 130 North. Follow Route 130 North until Route 206 and South 130 become one. Bear left onto Route 206 North towards Trenton. Follow this road about 2 miles until you see signs for I-295 North and take the exit ramp for I-295 North. You should also see signs for Route 129 Detour. Stay in the left lane and follow Route 129 towards Trenton. It will turn into Route 1 after the Hamilton Avenue exit. Take the exit for Perry Street. At the top of the ramp bear right onto Carroll Street. Follow that road up one block to East State Street and make a left onto East State Street. HPO will be on your right at the corner of East State Street and Clinton Avenue.

Directions from the East/Shore Areas:

Take I-195 West until the road splits into I-295 North or Route 129. Bear to the left, follow Route 129 towards Trenton. It will turn into Route 1 after the Hamilton Avenue exit. Take the exit for Perry Street. At the top of the ramp bear right onto Carroll Street. Follow that road up one block to East State Street and make a left onto East State Street. HPO will be on your right at the corner of East State Street and Clinton Avenue.

Historic Preservation Office

5 Station Plaza, 501 East State Street
Trenton, NJ 08625

Tel: (609) 292-2023, 292-2028 or 984-0140, Fax: (609) 984-0578



State of New Jersey

Christine Todd Whitman
Governor

Department of Environmental Protection

Robert C. Shinn, Jr.
Commissioner

DIVISION OF PARKS AND FORESTRY
HISTORIC PRESERVATION OFFICE
CN-404

TRENTON, N.J. 08625-0404

TEL: (609) 292-2023

FAX: (609) 984-0578

December 27, 1994

To Preparers of Archaeological Survey Reports:

Attached please find a copy of, "Guidelines for the Preparation of Cultural Resources Management Archaeological Reports Submitted to the Historic Preservation Office." It has been several years since the Historic Preservation Office (HPO), working with the Archaeology Guidelines Committee (including consultants and agency archaeologists), first issued this document. It has been used in reviewing reports since then, and the HPO felt it was time to make note of some problems with reports and to again send out the guidelines. There are a few minor corrections and clarifications, but no substantive changes.

As of March 1, 1995, the HPO will ask for strict adherence to these guidelines for reports of Stage I, II, and III archaeological investigations, unless exceptions have been agreed upon in advance of report submission to the HPO. We would ask that draft reports be revised in response to HPO review comments and resubmitted in final form within two (2) months of the preparer's receipt of comments.

I have also taken this opportunity to add a separate note regarding the HPO's policy on letter reports (see next page).

Report Shortcomings in Meeting the Guidelines

Pages 7 and 8 of the guidelines present a checklist of report features that are typically considered in report review. Commonly encountered report problems include:

1. Site forms are not appended for sites newly recorded by the reported project.
2. Site form updates are not appended for previously recorded sites revisited by the reported project.

Archaeological Report Guidelines Cover Letter
page 1

3. Smithsonian Institution Trinomial System (SITS) site numbers are not used to identify recorded sites in the text of the report.
4. Historic archaeological sites are not recorded on site forms for registration with the New Jersey State Museum and designation with SITS numbers.
5. Known or estimated site limits are not discussed or illustrated in relation to the boundaries of the Area of Potential Effects (APE) of the proposed undertaking.
6. For sites evaluated as eligible for listing in the National Register of Historic Places under Criterion D, specific statements are frequently not presented regarding the sorts of important new information such sites are judged to be likely to yield. Further, site evaluations must be presented within the context of known sites relevant to the research potential of the site in question.
7. Reports are sometimes artifact-data-deficient. That is, there is inadequate treatment of artifact processing, artifact classification, artifact data collection, and/or artifact analyses.
8. Representative and/or diagnostic artifacts are sometimes not illustrated.
9. Repositories for curation of artifacts and project records are often not identified.

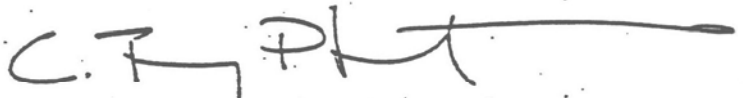
HPO's Policy on Letter Reports

The HPO's policy on "letter reports" is as follows. Project schedules should allow adequate time and resources to produce complete reports. Only in the most unusual circumstances will letter reports/management summaries be accepted, and these circumstances must be acknowledged by the HPO in advance. Examples of circumstances where letter reports/management summaries may be accepted in lieu of full reports include situations in which (1) a letter report leads into a data recovery with a complete final report to be produced at the end of the data recovery; and (2) a letter report enables construction to proceed with a complete final report to be produced at an agreed upon later date. Letter reports/management summaries may also be acceptable when they result from follow-up work such as monitoring that is conducted subsequent to preparation of a final report for prior work such as a data recovery excavation.

Letter reports/management summaries of these sorts need not be stand-alone documents. However, they must contain adequate narrative, graphics, etc., to allow HPO staff reviewers to render independent opinions regarding the adequacy of the effort and the appropriateness of the opinions or recommendations rendered, and they should conform to applicable portions of the report guidelines (e.g., original photographs). Further, they must conform to the appropriate Secretary of the Interior's, "Standards and Guidelines for Archaeology and Historic Preservation" (e.g., Standards and Guidelines for Identification, Evaluation, Historical Documentation, and Archaeological Documentation).

If you have questions regarding the archaeological report guidelines or letter reports, please contact Deborah Fimbel or Mike Gregg in the HPO. Thank you for your continuing commitment to Historic Preservation.

Sincerely,



C. Terry Pfoutz, Supervisor
Technical Review Section

MLG:C:\WD\REPORTGL

c: James Hall, Assistant Commissioner for Natural and
Historic Resources

Ernest Hahn, LURP

Andras Fekete, DOT

Terry Karschner, Acting Administrator



State of New Jersey

Department of Environmental Protection

Christine Todd Whitman
Governor

Robert C. Shinn, Jr.
Commissioner

DIVISION OF PARKS AND FORESTRY
HISTORIC PRESERVATION OFFICE
CN-404

TRENTON, N.J. 08625-0404

TEL: (609) 292-2023

FAX: (609) 984-0578

GUIDELINES FOR PREPARING CULTURAL RESOURCES MANAGEMENT ARCHAEOLOGICAL REPORTS SUBMITTED TO THE HISTORIC PRESERVATION OFFICE DECEMBER 1994

Reports must be submitted as individual documents for accessioning in the Historic Preservation Office (HPO) contract and grant report reference library. This requires providing a copy in a hard-covered binder suitable for shelving and printed on bond paper. The text print must be letter quality, although appendices (e.g., soil logs) may be dot matrix if legible. In addition, an Annotated Bibliography form must be filled out and submitted as a separate sheet with each report.

Title Page

1. Title, including phase of work (IA, IB, II, and/ III), municipality, and county.
2. Author(s), including contributors. If an organization's policy prohibits identification of authors on the title page, this information should be included elsewhere in the report.
3. Organization report is prepared by.
4. Agency and/or client report is submitted to.
5. Contract number, if appropriate.
6. Date of report submission or completion.

Acknowledgments (optional)

Management Summary

1. Project type.
2. Location and size of project area.
3. Review authority.
4. Field methods.
5. Results.
6. Evaluations, impacts, and recommendations.
7. Location where copies of report on file.

Table of Contents

Archaeological Report Guidelines, Page 1

Lists of Figures, Plates, and Tables

Figures, plates, and tables should be incorporated into the text on the page following the citation. They should not be appended. Like the text, all maps, figures, etc. must be on archivally stable paper.

1. The report must contain original photographs. Photographs should be black and white and a minimum of 3" x 5" in size; 5" x 7" or larger photographs may sometimes be necessary for clarity. Photograph captions for site overviews must include direction or orientation. For larger projects, photograph locations should be keyed to a site map. Photographs of features, etc., must include scale, title board, and orientation. Captions should identify photographer and date of exposure.
2. All maps, including reproductions of historic maps, must include a north arrow, accurate bar scale, delineation of the project area, legend, map title, and year of publication. Reports must include the project area accurately delineated on a U.S.G.S. 7.5' topographic map and a county soils survey map, if available for that area. A map showing the project area in relation to New Jersey's physiographic provinces is recommended.
3. Cross section and profile drawings must include scale, elevation, orientation, soil descriptions, and soil colors (Munsell). Detailed plan view drawings should be keyed to the site map.

Introduction

1. Project purpose and goals, such as a summary of the scope of work, including applicable regulations or permits as known.
2. Project administration and contracting agency.
3. General description, including location, number of person days in the field, and project conditions or constraints.

Background Research

This section will vary in length and scope depending on the level of investigation and should relate directly to the project area and vicinity. For all levels of investigation, the background research must be sufficient to enable evaluating National Register eligibility by providing historic contexts for identified sites. For historic sites, background research should be sufficient to identify associations with significant people and events.

1. Environmental setting, including topography, soils, hydrology, and geology.
2. Summary of paleoenvironment, present climate, and current vegetation.
3. Past and present land uses and current conditions.
4. Overview of prehistoric and historic culture history of project locale, including the surveyed area. "Canned" histories should be avoided. This section should provide contexts for research questions, survey methods, site evaluations, and recommendations for further work.
5. Review of known sites, previous investigations and research in the project area and vicinity, and information provided by local collectors and ASNJ local chapter members. Attached is a list of standard references (e.g., Skinner and Schrabisch 1913; Cross 1941) that must be consulted for all projects.
6. Primary documentary research for the project area, including historic maps, deeds, or other pertinent information. Detailed individual property title searches may be appended.

Research Design

This section is required for all reports and will vary in scope and depth depending on the level and scope of the investigation. It outlines the purpose of investigation, basic assumptions about the location and type of cultural resources within the project area, and the rationale for the methods employed in the investigation.

1. Research objectives and theoretical context, with reference to the HPO historic contexts.
2. Specific research problems or questions.
3. Methods to be employed to address the research objectives and questions.
4. A discussion of the expected results, including hypotheses to be tested.

Methods

1. Description of field and laboratory methods employed, including rationale, discussion of biases, and problems or obstacles encountered. This should include discussion of materials not collected in the field (field sorting) and discarded in the laboratory. Details regarding lab procedures may be presented in artifact appendices.
2. An estimated percentage of total project area investigated, with discussion of sampling design and

- rationale. This must include descriptions of shovel test and test excavation unit sizes. Archival maps showing location of survey and testing must be included in this section.
3. Discussion of changes made during fieldwork from the stated methods, and the rationale for these changes (e.g., as the result of field conditions).
 4. Definition of "site" used in the survey.

Field Results

1. Clear description of all areas investigated, including those where resources were not recovered or observed. This section must include the total number of tests excavated.
2. Summary of soils and stratigraphy, including areas and types of disturbance. A description of the stratigraphy of representative shovel tests should be included as an appendix.
3. The description of each identified site must include topographic setting and stratigraphy, size, noted structures or features, artifact types, and an estimate of artifact density. References to sites in the text, figure captions, and table titles in the final report must include Smithsonian numbers.
4. Maps, figures, and photographs of test locations, features, and soil profiles, as appropriate.

Artifact Analysis

A separate analysis chapter may not be necessary, depending on the scope of the investigation and field results. Descriptions of limited quantities of artifacts may be incorporated into the field results with references to the artifact inventory appendix.

1. Artifact descriptions and results of analyses. Definitions of artifact classes and attributes should be provided along with pertinent references.
2. Photographs or drawings of selected or representative artifacts, including scale. A complete inventory of artifacts by provenience and class should be included as an appendix.
4. Tables or other summary information.
5. Identification of repository for artifact collection and project files.

Interpretations

1. Discussion of results in terms of the background cultural context, research design, goals, and research problems with reference to the HPO historic contexts.

2. Discussion of constraints and reliability of methods.
3. Discussion of potential research questions based on the results and conclusions.

Evaluation of National Register Eligibility, Project Effects, and Site Recommendations: Phase I and Phase II Reports

This section will vary in length depending on the level of investigation. Documentation must be sufficient to allow the reviewer to make independent evaluations of the New Jersey Register and National Register eligibility of identified properties. This includes sufficient documentation to evaluate significance using the four National Register criteria. A Phase I report should address potential eligibility, rather than a full evaluation. Recommendations that a site is not eligible must be fully documented as described below. A Phase II report must contain a full evaluation and include adequate information on both horizontal and vertical extent of the site.

1. Evaluation of each site in terms of known information and research potential, within the context of current broad questions in anthropological and historical theory. The eligibility of each site should be assessed for listing in the New Jersey and National Registers of Historic Places, using the National Register criteria for evaluation. The factors considered in making the assessment need to be fully described. The eligibility of each property must be evaluated within the HPO historic context framework. Significance statements must be fully developed with reference to historic contexts.
2. Description of both direct and indirect impacts from the project on each site identified. This should include depicting identified sites on project maps, if available.
3. Depending on the level of investigation, appropriate recommendations for each site, including no further work, additional investigations, data recovery, or avoidance. Other specific recommendations may also be appropriate, e.g., special analyses that should be undertaken if there is additional work at the site.

Sources

All sources may be listed together.

1. References cited and consulted (American Antiquity format).
2. Maps.
3. Archival documentation.

4. Personal communications from informants, including oral histories.
5. Pertinent project correspondence.

Appendices

1. Qualifications of Principal Investigator, Field Director, and Laboratory Supervisor, if applicable.
2. Scope-of-Work.
3. Representative soils logs.
4. Artifact inventory by provenience.
5. Specialized analyses and deed research, if appl.
6. Site forms for all recorded sites.

STANDARD REFERENCES TO BE CONSULTED

- Bello, Charles A. (compiler and editor)
 1986 Index, Bulletin No. 1, 1948 through Bulletin No. 40,
 1986. Bulletin of the Archaeological Society of New
 Jersey No. 41:1-27.
- 1990 Index, Bulletin No. 41, 1986 through Bulletin No. 45,
 1990. Bulletin of the Archaeological Society of New
 Jersey No. 45:96-110.
- Chesler, Olga (editor)
 1982 The Paleo-Indian Period to the Present: A Review of
 Research Problems and Survey Priorities. New Jersey
 Department of Environmental Protection, Division of Parks
 and Forestry, Office of New Jersey Heritage, Trenton.
- 1984 Historic Preservation Planning in New Jersey:
 Selected Papers on the Identification, Evaluation, and
 Protection of Cultural Resources. New Jersey Department
 of Environmental Protection, Division of Parks and
 Forestry, Office of New Jersey Heritage, Trenton.
- Cross, Dorothy
 1941 Archaeology of New Jersey, vol. I. Archaeological
 Society of New Jersey and New Jersey State Museum,
 Trenton.
- New Jersey Department of Environmental Protection
 1979-1985 Annotated Bibliography: Cultural Resource Survey
 Reports Submitted to the New Jersey State Historic
 Preservation Officer. 5 vols. Division of Parks and
 Forestry, Office of New Jersey Heritage, Trenton.
 Reports submitted since 1985 are available for review at
 the HPO.
- 1990 New Jersey and National Registers of Historic Places
 as of December 31, 1988. Division of Parks and Forestry,
 Office of New Jersey Heritage, Trenton.
- 1994 New Jersey & National Register of Historic Places,
 1989-1992 Addendum. Division of Parks and Forestry,
 Historic Preservation Office, Trenton.
- New Jersey Pinelands Commission
 1980 New Jersey Pinelands Comprehensive Management Plan.
 New Lisbon NJ.

1991 Pinelands Cultural Resource Management Plan for
Historic Period Sites. New Lisbon NJ.

Schrabisch, Max

1915 Indian Habitations in Sussex County, New Jersey.
Bulletin No. 13. Geological Survey of New Jersey,
Union Hill.

1917 Archaeology of Warren and Hunterdon Counties.
Bulletin No. 18 (Geologic Series). Reports of the
Department of Conservation and Development, Trenton.

Skinner, Alanson and Max Schrabisch

1913 A Preliminary Report of the Archaeological Survey of
the State of New Jersey. Bulletin No. 9. Geological
Survey of New Jersey, Trenton.

Spier, Leslie

1915 Indian Remains near Plainfield, Union Co., and along
the Lower Delaware Valley. Bulletin No. 13. Geological
Survey of New Jersey, Union Hill.

An up-to-date listing of New Jersey and National Register
properties is available for review at the HPO. Also
available for study at the HPO are New Jersey Historic Sites
Inventory records and Historic Preservation Fund Survey and
Planning Grant reports. County historic site surveys are
available for review at the HPO and local government offices.

Selected Criteria Used In Review of Archaeological Reports

1. Is the Annotated Bibliography form attached?
2. Is the project information (e.g. agencies, regulatory citations, project boundaries) accurate and complete?
3. Is the environmental and background information adequate? Are previous investigations in the area described?
4. Is the research design clearly stated and related to the HPO historic contexts?
5. Is the fieldwork clearly presented? Are all investigated areas clearly identified, described in the text, and illustrated on maps? Are all identified sites clearly and adequately described and mapped?
6. Are artifacts and features described, illustrated, and analyzed? Is the artifact inventory appended? Is the artifact repository identified?

7. Do site interpretations refer to the background context, stated research design, and HPO historic contexts?
8. Are the integrity and significance of each site fully explored and justified? Are both primary and secondary impacts of the project fully assessed for each resource? Do the recommendations take into account the evaluations of eligibility and the full range of project impacts?
9. Are maps, photos, tables, and figures clearly presented, and do they contain all appropriate information?
10. Are references complete?
11. Are the appropriate appendices contained within the body of the report, including site forms, soil logs, artifact inventories, and resumes?
12. Is the report, including all maps and figures, on archivally stable paper and securely bound?

**HISTORIC PRESERVATION OFFICE
BIBLIOGRAPHIC ABSTRACT INFORMATION**

Author(s):

Report Title:

Location:
(County and Municipality)

Drainage Basin:

USGS Quadrangle:

Project:
(Agency, type of review, and brief project description)

Level of Survey:

Cultural Resources Identified:

NEW JERSEY HISTORIC PRESERVATION OFFICE, HISTORIC CONTEXTS

Under the National Historic Preservation Act, each State Historic Preservation Office is responsible for preparing and implementing a "comprehensive statewide historic preservation plan." A State Historic Preservation Plan is a concise document that describes a vision for historic preservation in the state as a whole and sets future direction for the State Historic Preservation Office. It provides direction and guidance for decision-making by addressing, at a general level, the state's full range of historic resources including objects, buildings, structures, districts, and archaeological sites. Information on historic resources used to develop and update the State Historic Preservation Plan is derived from a variety of sources including historic context documents, theme studies, resource inventories, and National Register nominations. Historic context documents are emphasized in developing and revising a State Plan.

As of December 1994, the New Jersey State Historic Preservation Office (HPO) is in the process of drafting its State Plan. However, a reference file of historic context documents has already been developed. Historic contexts enable considerations of historic properties in terms of chronological timeframes, cultural themes (or topics), and geographic areas. The historic context files in the HPO are organized mainly by chronological categories and cultural themes. The following chronological categories were proposed in 1988 and have been utilized quite consistently over the past six years:

- | | |
|--|--------------------------|
| 1. Paleo-Indian | 11,500-8000 years ago |
| 2. Early Archaic | 10,000-6000 years ago |
| 3. Late Archaic | 6000-3000 years ago |
| 4. Early/Middle Woodland | 3000-1200 years ago |
| 5. Late Woodland | 1200 years ago-A.D. 1801 |
| 6. European Intrusion | A.D. 1500-1700 |
| 7. Initial Colonial Settlement | A.D. 1630-1775 |
| 8. Early Industrialization,
Urbanization, and
Agricultural Development | A.D. 1750-1860 |
| 9. Suburban Development | A.D. 1840-1940 |

- | | | |
|-----|---|-------------------|
| 10. | Immigration and Agricultural,
Industrial, Commercial, and
Urban Expansion | A.D. 1850-1920 |
| 11. | Metropolitan New Jersey | A.D. 1910-1945 |
| 12. | Modern New Jersey | A.D. 1945-present |

The sections of the historic context files dealing with cultural themes or topics identify a variety of subjects. Examples include Afro-Americans in New Jersey, Maritime New Jersey, Military History, and Transportation. These and all other historic context files are open for updating and expansion. New topics can be added as needed.

The third aspect of historic contexts is spatial or geographic variation. Therefore, the historic context files also contain information regarding human use of New Jersey by geographic area. Considerations of geographic variations are found primarily within individual sections of the files dealing with specific time periods and themes/topics.

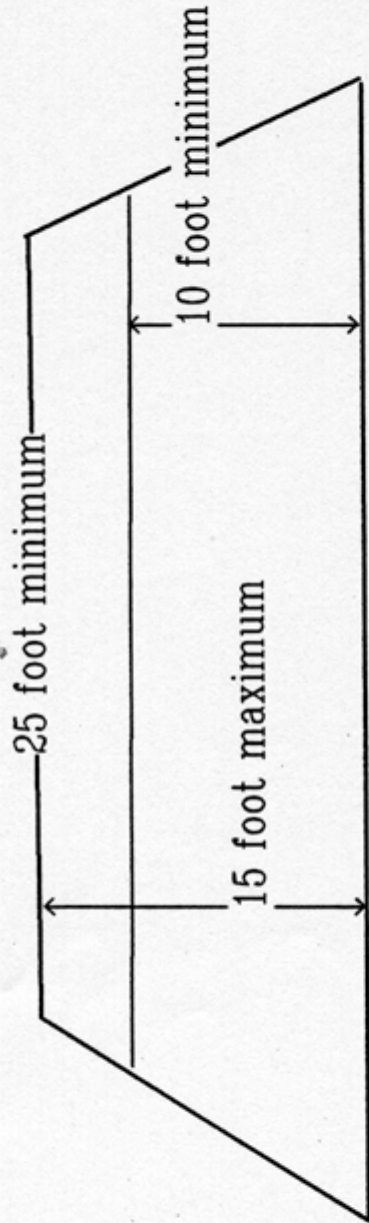
Preparers of archaeological reports are urged to become familiar with the historic context files. Ideally, these files should contain, or provide reference to, current information upon which a great deal of HPO planning and decision-making is based. Of particular concern to archaeological report writers, this decision-making includes evaluations of National Register eligibility for prehistoric and historic archaeological sites.

DRF/MLG:C:\WD\REPORTS

Appendix H

Details of Typical Parking Areas for Service Vehicles

APPENDIX H

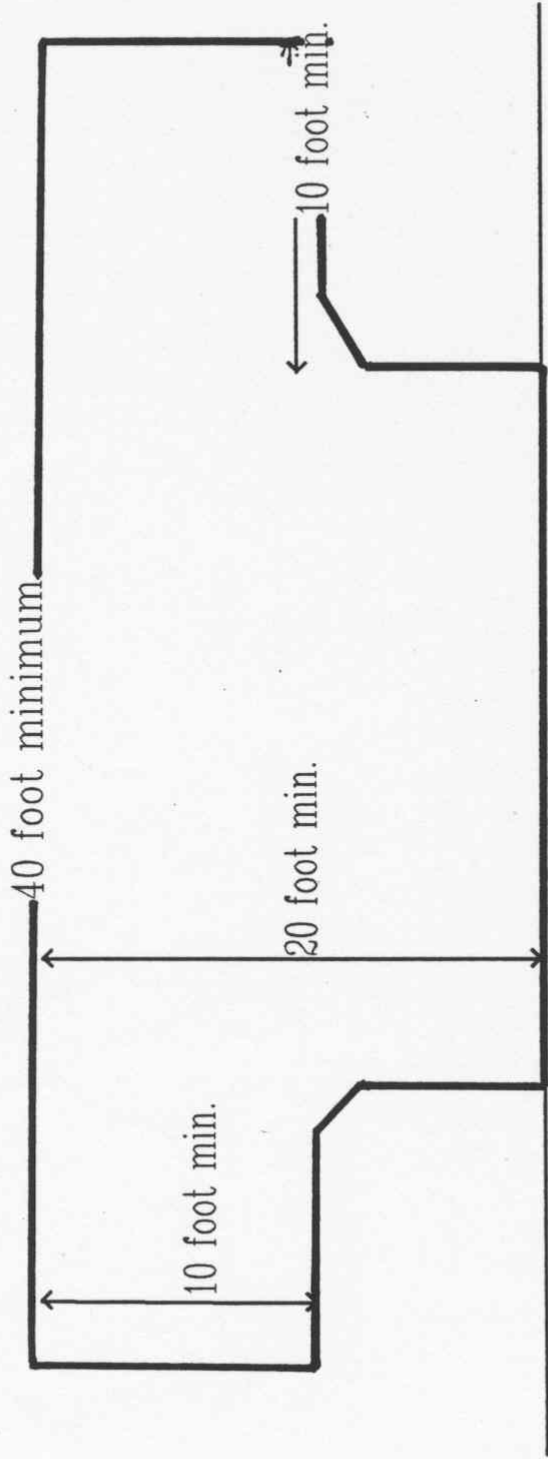


30 foot minimum
at curblines

Parking Area for service vehicles

where ROW is restricted

APPENDIX H



Parking area for service vehicles

where ROW is available

Exhibit A

Sample Individual Site Agreement

EXHIBIT A

**INDIVIDUAL SITE AGREEMENT _____ ISA # _____
for a
WIRELESS COMMUNICATION ANTENNA SITE
in accordance with the
AGREEMENT BETWEEN THE NJDOT AND The Carrier**

DATED _____

1. SITE:

The New Jersey Department of Transportation ("the NJDOT") hereby grants to the Carrier ("the Carrier") a license to use the following property or facility for the installation and operation of antennas and related wireless communication equipment in accordance with the terms of this individual site agreement and the Agreement between NJDOT and the Carrier, dated Date (hereinafter "the Agreement"):

SITE DESCRIPTION:

Description of site and its location.

2. TERM:

This is the initial five year term of the individual site agreement for the above-referenced site. The term of this agreement shall commence on the date that a building permit is issued for the Site and shall expire five years from that date.

3. COMPENSATION:

In accordance with the terms of the Agreement, the Carrier shall make annual payments to the NJDOT in the amount last shown in the "Compensation" column below:

<u>Term</u>	<u>Compensation</u>
<i>Term</i>	<i>\$00,000</i> annually in accordance with the provisions set forth in the Master Agreement, subsection 3(B), Base Fee Calculation for a category # <u>type of cell</u> .

**NEW JERSEY DEPARTMENT
OF TRANSPORTATION**

The Carrier

By: _____
F. Howard Zahn
Manager, Major Access Permits
Wireless Communications Unit

By: _____
Representative

Date: _____

Date: _____

INDIVIDUAL ACKNOWLEDGEMENT

State of New Jersey

County of _____

On this ___ day of _____, _____, before me appeared _____ to me personally known, who being by me duly sworn, did say that he/she is _____ of _____, a corporation, and that said instrument was signed on behalf of said _____ and said _____ acknowledged said instrument to be his/her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in said county and state of the day and year last above written.

Notary Public

My commission expires