

**CDOT ARCHAEOLOGY AND HISTORY ANALYSIS AND
DOCUMENTATION PROCEDURES**

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Introduction

Section 106 of the National Historic Preservation Act (NHPA) sets forth the process that Federal agencies must follow when planning undertakings that have the potential to affect historic properties. As stated in the introduction of the regulations:

Section 106 of the NHPA requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. [36 CFR 800.1]

The Federal agency with jurisdiction over an undertaking is responsible for complying with Section 106. For most CDOT projects, this agency is the Federal Highway Administration (FHWA). FHWA has authorized CDOT to conduct cultural resource surveys, recommend determinations of eligibility and effect, and consult directly with the SHPO on its behalf. FHWA is legally responsible for the findings and determinations made during the Section 106 process, and also determines whether the work done by CDOT fulfills the intent of the legislation. FHWA is also responsible for ensuring the Section 106 process is undertaken with enough time to plan for public coordination and SHPO review of a broad range of alternatives. Otherwise, the agency may be unable to document that it has fulfilled its responsibilities under Section 106.

Any formal coordination with the Advisory Council on Historic Preservation (ACHP) is completed through FHWA (or other federal agency with jurisdiction over an undertaking). Whenever a project is determined to have adverse effects to historic properties, FHWA must notify the ACHP, and invite the ACHP to take part in consultation regarding these properties, a process that can require more time to issue a clearance. The ACHP will often become formally involved in the review of the following types of projects:

- Projects with substantial impacts on important historic properties (including National Historic Landmarks, which also involve coordination with the National Park Service).
- Projects with important questions of policy or interpretation of the Section 106 regulations.
- Projects with the potential for procedural problems, public controversy, or litigation.
- Projects of concern to Native American tribes that involve high-profile or problematic issues.

Federal Laws and Regulations

National Environmental Policy Act of 1969 (NEPA); Antiquities Act of 1906; National Historic Preservation Act of 1966, (as amended); National Register of Historic Places Act, 36 CFR 60; Determination of Eligibility, 36 CFR 63; Advisory Council on Historic Preservation regulations, 36 CFR 800 (as amended); Executive Order 11593, Protection and Enhancement of the Cultural Environment; Native American Graves Protection and Repatriation Act (NAGPRA) (as amended).

State Laws and Regulations

Historical, Prehistorical, and Archaeological Resources Act, CRS 24-80-401ff; 24-80-1301ff;
Colorado Register of Historic Places Act, CRS 24-80.1ff

The Section 106 Process

The Section 106 regulations and guidance materials describe a four-step process agencies must follow to assess the eligibility of historic properties and potential impacts to these properties. Surveys conducted for CDOT undertakings often accomplish multiple steps under one transmittal letter to the SHPO (determinations of eligibility and effect as well as preliminary recommendations for mitigation of adverse effects), although this is project-specific. (Note that this generally entails one letter each for archaeology and history, although they may be combined as a situation dictates.) The regulations recognize that agencies can conduct consultation on several steps at one time, as long as the process includes adequate time to consider the views of interested parties and the public.

The following are average time frames for completion of the Section 106 process, from notification to completion, if all necessary information is provided in a timely manner and there are no problems. (Note: these time frames *do not* include Section 4(f) evaluations, which are detailed in a separate chapter.) The effects determinations are explained in detail below.

- Adverse Effect – six months or more
- No Adverse Effect – four months
- No Historic Properties Affected – two months

Definition of “Undertaking”

For transportation projects, an undertaking is typically defined as any construction, maintenance, or enhancement project with the potential to impact historic properties. Effects can include:

- The taking or alteration of all or part of a building, structure, or property 50 years of age or older.
- Ground disturbance in the vicinity of historic properties.
- Changes in appearance, noise levels, or visual characteristics in the vicinity of historic properties.
- Transfers involving lease or sale of a property.

Any time a project will or may have direct or indirect impacts to potentially historic properties, whether within public right-of-way or on private land, an historical clearance should be discussed with the Senior Staff Historian and Senior Staff Archaeologist.

STEP 1: Initial Consultation with Participants in Section 106

The RPEM should notify the Senior Staff Historian and/or Senior Staff Archaeologist if he or she is aware of any parties with an interest in the undertaking. The appropriate Environmental

Programs Branch staff specialist will contact the members of Certified Local Governments (CLG), local historical societies, museums, historic preservation commissions, or other knowledgeable individuals who might be able to provide views or comments on an undertaking or have specific knowledge concerning historic properties. Notification of the public and/or historic preservation organizations and individuals will occur commensurate with the type of undertaking, its anticipated effects on historic properties, and the level of federal involvement.

STEP 2: Identification of Historic Properties

This step determines whether any resources that may be affected by an undertaking have the potential to be eligible for or listed on the National or State Registers of Historic Places. It is not necessary for a resource to be listed on the National Register to be afforded protection under the law, as eligible properties are also protected.

National Register eligible resources must meet certain criteria, including association with significant events or people; technological, engineering, or architectural significance; or the ability to yield information about a prehistoric or historic site. In addition to meeting the significance criteria, a resource must retain physical integrity or be able to demonstrate or communicate the qualities of its significance. Except under exceptional situations, cemeteries, birthplaces, churches, structures that have been moved from their original location, reconstructed structures, memorial or commemorative structures, and structures less than 50 years old, are not considered eligible to the National Register. Isolated artifacts and features also are generally evaluated as not NRHP eligible.

If a property is determined not eligible to the National Register, the Section 106 process is completed. However, even though a property may not have the significance or integrity to be nationally eligible, it can still be eligible for or listed on the State Register of Historic Places. If so, it must be considered under the Colorado Register of Historic Places Act. In addition, some local governments in Colorado have historic preservation ordinances and/or lists of local landmark districts and properties. Some properties may be listed as locally significant, and impacts to these resources must be coordinated with the local government.

A. Determine Undertaking's Area of Potential Effects (APE)

The Senior Staff Historian, Senior Staff Archaeologist and cultural resource consultant (where applicable) is responsible for determining and documenting the Area of Potential Effects (APE) for each project. The APE is defined as:

The geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking [800.16(d)].

In all cases, an APE must be developed in consultation with CDOT cultural resource staff and the SHPO, and in most cases prior to the intensive-level field survey. The APE is not necessarily

determined on the basis of land ownership or legal parcel boundaries and does not end at the highway right-of-way boundary. The APE includes:

- All alternatives being considered for the undertaking.
- All locations threatened with ground disturbance.
- All locations from which the undertaking may be visible or audible.
- All locations where the undertaking may result in changes in traffic patterns, land use, public access, etc.
- All areas where there may be indirect as well as direct effects.

An APE is determined according to specific project circumstances. All potentially historic properties within the APE must be taken into account when assessing project impacts. An APE boundary may change during the course of a project as alternatives are modified, new alternatives are considered, or new impacts to historic properties are identified.

B. SHPO Concurrence with Determinations of Eligibility

Once historic properties are identified within the APE, the Senior Staff Historian, Senior Staff Archaeologist and consultant, where applicable, evaluates each property for historical or archaeological significance and recommends whether or not the property is eligible to the National or State Registers.

If it is determined that no historic properties exist within the APE, or that historic properties exist but will not be impacted by the work, and the SHPO concurs with this determination, the resulting determination is *no historic properties affected*, and the Section 106 process is completed. If NRHP eligible properties exist and there is potential for impact to these properties, the project team continues to Step 3.

According to the regulations, the SHPO has 30 days from receipt of the documentation to provide comments to CDOT. If they do not submit their comments within the 30-day period, CDOT is authorized by the regulations to assume SHPO concurrence. If the SHPO does not participate within the specified time frame for one phase of a project (i.e., eligibility determination), that does not preclude their participation in further phases of a project (i.e., determinations of effect, consultation, and final review of NEPA documentation).

STEP 3: Assessment of Adverse Effects

During this step, the Senior Staff Historian/Archaeologist or cultural resource consultant applies the criteria of adverse effect to any eligible or listed historic properties within the APE. This process involves consultation with the SHPO as well as with interested parties that may have been identified during Steps 1 or 2. Effects include direct, physical impacts to historic properties, as well as indirect or secondary impacts such as noise, visual, or atmospheric elements that may diminish a property's integrity or alter the qualities that make it eligible to the National Register of Historic Places (NRHP).

A. No Adverse Effect and Adverse Effect

An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify it for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. [36 CFR Part 800.5(a)(1)]

Adverse effects include, but are not limited to:

- Physical destruction or damage to all or part of a property.
- Alteration of a property not consistent with the Secretary's Standards for the Treatment of Historic Properties [36 CFR part 68].
- Removal of the property from its historic location.
- Change of the character of the property's use or physical features within the property's setting that contribute to its historic significance.
- Introduction of visual, atmospheric or audible elements that diminish integrity of the property's significant historic features.
- Neglect of a property.
- Transfer, lease, or sale of a property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance [800.5 (a) (2) (i-vii)].

The finding of *no adverse effect* can be applied when an undertaking's effects do not meet the criteria of adverse effect but are still considered to have an effect on a property. This finding can also be applied when specific conditions are met to avoid adverse effects.

If SHPO concurs with the finding of *no adverse effect*, CDOT may proceed with the undertaking and the Section 106 process is completed. The ACHP will not review findings of *no adverse effect*, except under unusual circumstances. If the SHPO fails to respond within 30 days of their receipt of the finding, CDOT may assume SHPO concurrence with the finding and proceed with the project.

If the determination results in a finding of *adverse effect*, CDOT must proceed to Step 4 and consult further with the SHPO and other interested parties to resolve or mitigate adverse effects to historic properties.

STEP 4: Resolution of Adverse Effects

The purpose of this step is to develop strategies that avoid, minimize, or mitigate adverse impacts to historic properties but also meet the basic objectives of all interested stakeholders. Measures to mitigate negative impacts to historic resources include adjusting the proposed alignment to avoid impacting the resource, moving the resource to a new location (which generally does not apply to archaeological localities), and, as a last resort, photographic and written recordation of the resource prior to demolition. Ideally, alternatives that avoid historic properties will already have been considered prior to this step.

FHWA notifies the ACHP of an *adverse effect* determination and provides specific documentation for their review of the project. The ACHP is given 15 days from receipt of the documentation to determine whether or not they will participate in a project. If a response is not received within that time frame, the agency continues the consultation without the involvement of the ACHP. In addition, FHWA must invite the ACHP to participate in the consultation of adverse effects when:

- FHWA wants the ACHP to participate (i.e., for very controversial or high-profile projects).
- The undertaking will have an *adverse effect* on a National Historic Landmark.
- The project will result in the preparation of a Programmatic Agreement (a document intended to address adverse effects for complicated projects or for repetitive projects that result in expected outcomes; examples below).

Memoranda of Agreement (MOA)

To resolve adverse effects to historic properties on a project-by-project basis, interested parties develop a Memorandum of Agreement (MOA) outlining agency responsibilities to avoid, minimize, or mitigate adverse effects. In virtually all cases, CDOT Cultural Resource Section staff develop and facilitate project-specific MOA's. Significant archaeological sites, which previously were exempt from this process, are now subject to development of an MOA prior to data recovery excavations. If the ACHP decides to join the consultation, an MOA is executed with its participation. If not, the agreement is developed and executed by FHWA and SHPO, with CDOT as an invited signatory. In addition, the agencies may invite other organizations (i.e., Indian tribes, local historic preservation commissions, etc.) to participate as invited signatories in the development of an MOA if those entities will assume a specific role or responsibility as outlined in the MOA. Other interested parties lacking explicit action items may be invited to sign the document as concurring parties.

The execution and implementation of the stipulations in an MOA provides evidence of FHWA's compliance with Section 106. The MOA is submitted to the ACHP for filing, and CDOT, on behalf of FHWA, ensures the mitigation stipulations are carried out in accordance with the MOA. Unless project circumstances change and other potentially historic properties will be affected by an undertaking, or CDOT/FHWA is unable to fulfill the stipulations of the MOA, the Section 106 process is considered complete.

Streamlining Initiatives

CDOT currently has four streamlining agreements in effect with the SHPO that pertain to various circumstances in the transportation project development and implementation process. These agreements are in the form of either Programmatic Agreements or Memoranda of Understanding:

Minor Highway Improvement Projects Programmatic Agreement (PA): Executed in 1991 by FHWA, SHPO, Colorado State Archaeologist, ACHP and CDOT, this agreement specifies certain project types that have been determined to cause no effect to historic resources and therefore do not require coordination with SHPO and ACHP. Typical projects include curb and

gutter, guardrail installation, lighting and signalization, improvements at railroad crossings, minor widening of structures over historic linear features, paving of gravel shoulders, overlay and sealcoats, bridge deck rehabilitation (non-historic structures only), certain highway intersection improvements and minor widening projects. There are exceptions to these project types, so the Senior Staff Historian must always be contacted to determine if this agreement applies.

Section 106/State Register Act Procedures Memorandum of Understanding (MOU): This Memorandum of Understanding, signed in 1996 by SHPO and CDOT, outlines the procedures to be followed in order to increase the efficiency of the Section 106 and State Register Act clearance process for history (archaeology is not covered by this agreement). In certain circumstances, to be determined by the Senior Staff Historian, coordination with the SHPO will not be required. The Senior Staff Historian is also able to determine the scope and type of survey required based on the magnitude of the project, and can make determinations of eligibility and effect without consultation from the SHPO under certain conditions. This agreement does not apply to projects completed by consultants.

Historic Bridges Programmatic Agreement: A PA regarding the management and preservation of Colorado's historic bridges was signed in 2003 by FHWA, SHPO, CDOT, and ACHP. This document updates the 1988 PA for historic bridges, and references the results of the 2001 statewide Historic Bridge Inventory. The new PA outlines the process by which listed, eligible, contributing, potentially eligible, and non-eligible bridges will be addressed during the Section 106 review process. It stipulates that FHWA and CDOT are not required to consult with SHPO on potentially eligible and non-eligible bridges, outlines the Section 106 consultation process, and addresses proposed mitigation for historic bridge projects resulting in adverse effects.

Negative Finds Memorandum of Understanding: This 1989 agreement involving CDOT, SHPO and the State Archaeologist, stipulates that archaeological studies undertaken by CDOT that fail to result in the documentation of sites, or where only isolated finds are recorded, do not require SHPO concurrence. Reports are forwarded to SHPO for informational purposes; CDOT neither expects nor receives a written response from SHPO related to Section 106 compliance.

The Senior Staff Historian and/or Senior Staff Archaeologist will determine when the use of these agreements is appropriate. If one or more of these agreements can be applied to a project, the EPB specialist will write a memo to the RPEM explaining why the agreement applies and the terms of the clearance. This memo serves as the clearance required for historic properties. If a project does not meet these circumstances, additional research will be required to process the project under the terms of Section 106.

Requesting Archaeology and History Surveys from CDOT Staff

For most Categorical Exclusions and other types of smaller-scale undertakings, the Senior Staff Historian and/or Senior Staff Archaeologist (or their staff) will conduct a pedestrian survey, as appropriate, and prepare the necessary reports and paperwork, time and schedules allowing. Otherwise, projects are forwarded to the statewide cultural resources consultant under contract to the Environmental Programs Branch. Project coordination involves completing a survey,

preparing reports and letters, and forwarding documentation to the SHPO, Advisory Council, FHWA, or other agencies, as necessary. Meetings with the SHPO will be scheduled as needed by the Senior Staff Historian, and on rare occasions by the Senior Staff Archaeologist. Copies of all correspondence will be forwarded to the RPEMs for their files.

Process for Requesting and Completing Historical Resource Clearances

Region Planning and Environmental Managers (RPEMs) are encouraged to contact the Senior Staff Historian as early as possible to discuss undertakings that have the potential to impact historic properties, objects, or structures. It is important to identify potential historic resources early in the planning phase to allow enough time for coordination with regulatory agencies and other interested parties. Section 106 also requires coordination with local historic preservation commissions if they have jurisdiction within the project area, in addition to public notification.

Historic resources are those that are fifty years or older; however, resources less than 50 years old are surveyed if they have exceptional significance or contribute significant information to the historical record. Typical historic resources include buildings, residential neighborhoods, commercial districts, agricultural complexes, bridges, irrigation canals and ditches, reservoirs and railroad lines. Less obvious resources include structure foundations, trails, sidewalks, and landscapes, including vegetation and dumps. RPEMs should notify the Senior Staff Historian if a project has the potential to affect historic resources—generally projects that require right-of-way where buildings, irrigation ditches, railroad lines, or similar features are located.

A. Information Required to Initiate an Historical Clearance

1. Detailed project description, including:
 - (a) Project number and title, and all appropriate accounting numbers
 - (b) Project limits (i.e., amount of land to be surveyed on either side of the centerline, milepost limits, etc.)
 - (c) Project location map
 - (d) Design plans (if available)
 - (e) Copy of the 128/463, memos, or other documents describing the project
2. Brief description of resources to be impacted, i.e., CDOT structure numbers and locations, or description of ditch, farm house, neighborhood, etc.
3. Project Schedule, with estimates of FIR, FOR, and AD dates.
4. Written memo or telephone conference with the Senior Staff Historian describing concerns about potentially historic resources or other project related issues.

Process for Requesting and Completing Archaeological Resource Clearances

At the earliest possible date in the planning process for a proposed undertaking, the RPEM should forward to the Senior Staff Archaeologist a written request for an archaeological clearance. Undertakings include, but are not limited to, highway construction projects, off-system roadway projects, maintenance activities, transportation enhancements, and property transfers or sales. Archaeological investigations initiated by private contractors for activities associated with CDOT projects—such as undesignated material sources and equipment staging areas—are the responsibility of the contractor. It is imperative that project managers and

contractors are made aware of their responsibilities in this regard, and that all appropriate permits and clearances are obtained prior to initiating ground disturbance for any activity peripheral to actual construction.

A. Information Required to Initiate an Archaeological Clearance

1. Project number and name.
2. Appropriate accounting numbers.
3. Brief description of the project.
4. Physical dimensions of the study corridor, including beginning and ending mileposts and corridor width.
5. A copy of a 7.5 minute USGS topographic quadrangle or county map clearly showing the extent of the proposed undertaking, and engineering design plans, if available.
6. In order for a clearance to be provided in a timely manner, a specific due date must be furnished.
7. If temporary or permanent easements beyond the existing right-of-way are required to accommodate detours, line-of-sight improvements, shoulder widening or material source areas (among others), this should be noted and right-of-entry forms obtained and forwarded to the Senior Staff Archaeologist. CDOT Forms 128 and 463 can also be provided, but it is important to note that these forms *do not* by themselves constitute an adequate clearance request.
8. Field and archival investigations should generally be scheduled for completion by the Field Inspection Review.

Scheduling of archaeological fieldwork should take into consideration seasonal conditions. Projects with winter due dates should be requested in the summer or early fall. Although field surveys can be conducted in many parts of the state throughout the year (weather permitting), even a thin blanket of snow can potentially terminate inventory plans.

Initial Interagency Consultation

If a project area is located partially or entirely on lands administered by a federal land managing agency such as the US Forest Service or Bureau of Land Management, the Senior Staff Archaeologist will initiate consultation with that agency. In many instances the federal agency will take the lead on cultural resource issues, in which case all Section 106 administrative responsibilities and obligations will be completed by that agency, even though CDOT will conduct archival and field research.

Although the SHPO generally does not require initial consultation on archaeological projects, larger and/or more complex undertakings may require SHPO involvement in determining the Area of Potential Effect (APE). If a project is located on Indian reservation land, the Tribal Historic Preservation Officer (THPO), if designated, may formally assume responsibilities of the SHPO. The SHPO/THPO has 30 days in which to respond to a request for consultation. Tribal groups sometimes attach religious and cultural significance to properties beyond reservation boundaries, and these tribal entities—in addition to local governments, the general public and

other specific interested parties—also have a right to consult about heritage resource issues in the context of Section 106 and NEPA (see “Native American Consultation” subsection, below).

Contact with the Advisory Council on Historic Preservation (ACHP) is generally unnecessary as part of the initial archaeological consultation process. ACHP consultation is sought for undertakings involving federal funds, properties or permits, and usually only when historic or archaeological properties will be adversely affected.

When consulting firms contract with CDOT Regions to conduct archaeological investigations, the Senior Staff Archaeologist must be informed of the name and qualifications of the firm. The CDOT Archaeologist will initiate consultation with the SHPO/THPO and any appropriate federal agencies regarding the nature and extent of the consultant’s proposed work.

Requirements for Consultants Conducting Historic and Archaeological Surveys

All consultants are expected to perform a field survey of APE’s in accordance with the Secretary of Interior’s Standards for Archaeology and Historic Preservation, and the *Colorado Cultural Resource Survey Manual, Volume I: The Steps, and Volume II: The Forms* developed by the Office of Archaeology and Historic Preservation (OAHP). Prior to initiating work on an undertaking, consultants must coordinate directly with the appropriate CDOT cultural resource staff to discuss project approach. Consultants are required to conduct an OAHP file search prior to field investigations and review all pertinent maps and written information pertaining to previous inventories and documented sites, if applicable. It may be necessary to search other archival sources as well (i.e., federal agency files). In most cases, all sites surveyed will be recorded in their entirety, even if they extend beyond the limits of the project area. For historic sites (generally not including historic archaeological sites), consultants may find it advantageous to discuss survey results and preliminary determinations of eligibility with OAHP staff in order to confirm that all pertinent information has been collected for the survey. The CDOT Senior Staff Historian does not necessarily need to attend these informal meetings unless required by unusual situations, but should be informed in advance when consultants plan to speak with OAHP staff. In most cases, the consultant is responsible for assessing effects to historic and archaeological resources if or when design plans have been created for specific transportation projects. The assessment of effects should be undertaken in close consultation with the Senior Staff Historian and/or Senior Staff Archaeologist.

Consultants must submit all documents generated by the survey directly to the Senior Staff Historian or Senior Staff Archaeologist, as appropriate, who are responsible for direct coordination with the SHPO. Where a federal land managing agency has assumed the duties of Section 106 “lead agency” for a project, the Senior Staff Historian/Archaeologist will forward all documentation to that agency, which will review the findings and subsequently send it to the SHPO. ***Under no circumstances should a consultant send final documents or correspondence regarding specific projects directly to the SHPO.***

Required Documentation for Historic and Archaeological Surveys

Consultants conducting field surveys must submit the following documentation:

1. Historic and/or Archaeological Resource Survey Report, formatted according to the OAHP survey guidelines, documenting inventory of prehistoric or historic resources encountered in the project area, including recommendations of National or State Register eligibility for each resource. Consultants will provide three copies of the survey report (bound copies for history, bound or unbound for archaeology) that include OAHP inventory forms, in addition to at least one copy of the survey report without inventory forms for submittal to OAHP (or other federal agencies with jurisdiction over the undertaking, if needed). Site forms should not be included in bound archaeology report copies. All reports, site forms and other documentation must be printed double-sided; single-sided copies are unacceptable, unless previous justification and notification to this effect has been made to CDOT.
2. For archaeological and historic surveys, 7.5' USGS topographic quadrangles (or photocopied portions thereof) with the Area of Potential Effect clearly marked, and separate quad maps (generally as a report appendix) showing the location of all cultural resources present in the survey area. An explanation of the APE boundaries and why these boundaries were chosen must be provided, taking into account direct and (for historic resources) indirect impacts.
3. OAHP Inventory Record Forms, including 4 x 6 traditional 35 mm black and white prints, or black and white digital prints of historic resources over 50 years of age, and/or color photographs of archaeological resources, with significance statements and eligibility recommendations. Consultants should review the OAHP "Photographic Standards for Intensive Level Historical and Architectural Surveys" for more specific information about acceptable photographic documentation.
4. For historic surveys, Draft Determination of Eligibility and Effects letter (if required by terms of contract) to SHPO on CD or via electronic mail. Samples of these letters are available from the Senior Staff Historian.

Consultant Minimum Qualifications

1. All tasks must be performed under the direct supervision of an individual meeting the criteria established under the Secretary of the Interior's Standards for Archaeology and Historic Preservation.
2. Consultants must have documented experience in completing historical or archaeological studies (as appropriate) under the requirements of Section 106 of the National Historic Preservation Act (NHPA) and the State Register of Historic Places Act.
3. Consultants must have direct experience working with the Colorado State Historic Preservation Officer (SHPO) on cultural resource surveys and project coordination.
4. Archaeological consultants must possess a current State of Colorado Archaeological Survey Permit. When applicable, permits must also be obtained prior to project initiation from federal land managing agencies and Indian tribes.
5. All archival, field and laboratory investigations and resulting documentation will follow SHPO/THPO guidelines and other state and federal specifications, as appropriate.

Information Required in NEPA Documents

Information related to Section 106 compliance is required in Environmental Impact Statements and Environmental Assessments prepared for FHWA/CDOT projects, as stipulated in the National Environmental Policy Act (NEPA). While the formatting of these documents is

dependent to some extent on the template(s) utilized by different consultants and/or CDOT Regions, the historic properties data to be included must be well prepared, consistent and legally sufficient. NEPA document sections should be thorough—containing all relevant information related to the status and disposition of historic and archaeological resources within the study area—yet brief, omitting data that has no bearing on the transportation decision made as a result of the FONSI or ROD.

Depending on the document and the resources present in an APE, historic and archaeological resources can be discussed either jointly or independently.

Adequate NEPA documents should contain the following:

- Section title: “Historic and Archaeological Preservation.” Subsection titles: “Historic Resources” and “Archaeological Resources.”
- *Brief* overview of the “whys and whats” of Section 106, i.e., “Section 106 of the National Historic Preservation Act, and implementing regulations found in 36 CFR 800, require that federal agencies consider the effects of their undertakings on properties eligible for or listed on the National Register of Historic Places. The Section 106 compliance process involves four steps...” (etc.).
- *Brief* description of SHPO consultation regarding methodology(s) and development of the APEs, file searches and field inventory(s).
- Include the number and types of historic properties, and (for historic resources especially) include under which NRHP criteria they are eligible. Use data tables whenever feasible, especially if many properties are present. AVOID lengthy narrative site descriptions.
- Omit specific information regarding non-NRHP eligible resources. Focus on properties that require protection under the law (i.e., are NRHP eligible).
- NRHP eligible archaeological sites are sensitive resources that are exempt from the provisions of the Freedom of Information Act (FOIA), and should *never* be reflected on maps or otherwise have specific locational data included in a NEPA document. Historic resources, however, can and should be illustrated on mapping, including the APE boundary.
- *Be specific* when discussing effects and proposed mitigation of adverse effects for eligible sites. Use appropriate Section 106 language, i.e., *no effect to historic properties, adverse effect, no adverse effect.*
- Insert all interagency correspondence with the SHPO and other involved agencies or entities (including the public) in a Correspondence appendix of the NEPA document. It is unnecessary to include survey reports either in an appendix or elsewhere in an EA or EIS.

Native American Consultation Procedures

As stipulated in the National Historic Preservation Act of 1966 (as amended) and the revised Advisory Council on Historic Preservation regulations (36 CFR 800), federal agencies must afford the Native American community a reasonable opportunity to comment on and participate in federal undertakings in the context of the Section 106 process. According to 36 CFR 800.2(c)(2)(ii), the “...agency official [must] consult with any Indian tribe...that attaches

religious and cultural significance to historic properties that may be affected by an undertaking, ...regardless of the location of the historic property [on or off tribal lands].” Because federally recognized tribes are by law considered sovereign nations, FHWA is obligated to initiate government-to-government cultural resource consultations on transportation projects for which federal funding or a federal action is involved. FHWA has delegated most day-to-day consultation activities in this regard to CDOT. The CDOT Senior Staff Archaeologist is the individual charged with undertaking and/or coordinating Native American consultation on a project-by-project basis.

Tribal consultation will generally proceed as follows:

- Tribal consultation is required for every federal-aid transportation project in Colorado for which an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is prepared. Smaller projects involving unique or controversial issues of potential significance to Native Americans may also involve consultation, at the discretion of FHWA and the Senior Staff Archaeologist.
- The CDOT Archaeologist will initiate and complete most tasks in the consultation process, or must approve in advance a consultant to conduct the work under his supervision. In all cases, however, the Senior Staff Archaeologist must be notified—and will coordinate—this work.
- Forty-five tribes located throughout the Plains, Southwest and greater Intermountain West have some level of interest in historic properties consultation in Colorado on a county-specific basis. The Senior Staff Archaeologist has developed a complete and updated list of tribes and tribal contacts, each of which is cross-referenced by county.
- The RPEM should notify the CDOT Archaeologist early in the EA/EIS planning process in order for consultation to be properly coordinated. Information regarding the proposed undertaking (i.e., a statement of purpose and need or project overview) must be forwarded to the Archaeologist so that this data can be transmitted to the Native American community in a succinct, cogent manner.
- In most cases consultation is initiated when FHWA sends a letter to the tribal chairman and/or other designated representative(s) outlining the proposed undertaking and requesting government-to-government consultation, at the discretion of the tribe.
- In some cases, two to three weeks after the letter has been sent a follow-up telephone call is made to each tribe to ensure receipt of the correspondence, to solicit input, and to answer questions, as appropriate. Repeated phone calls, faxes or Emails may be necessary in order to guarantee that the information has reached the correct individual or office. However, if contact with a responsible tribal member has not been established after four phone calls (or other means) following the initial letter, a sufficient effort is presumed to have been made and no further actions are necessary.
- FHWA/CDOT is obligated to acknowledge and address any comments, questions or concerns voiced by tribes regarding an undertaking. It may be necessary to coordinate one or more meetings and/or visits to a project area involving interested tribal members during the consultation period. All travel costs, lodging, per diem and/or consultation fees incurred by tribes as a result of these meetings are the responsibility of the agency, as outlined in Executive Order 13175, *Consultation and Coordination With Indian Tribal Governments*. Vehicle mileage, lodging and per diem costs are established by CDOT

based on existing rates that vary depending on location, and therefore these costs may fluctuate from one project to the next. The daily consultation fee (or “honorarium”) is a fixed price based on comparable agency rates for the Section 106 process. CDOT has developed and implemented a compensation policy to guide the payment of fees and expenses during consultation.

- The consultation process is carefully documented by the Senior Staff Archaeologist and/or his designated representative(s). Depending on the complexity of the undertaking and other factors, a report or summary outlining the consultation process and its results may be required.
- At the time a Decision Document (FONSI or ROD, as applicable) is prepared, and only if there are no outstanding issues, the archaeologist prepares and sends a letter to all the consulting tribes notifying them that FHWA desires to close the initial phase of the consultation process. This does not abrogate the rights of the consulting tribes under Section 106, as they will retain consultation status throughout project construction.

It is important to note that Indian tribal governments—as sovereign nations—are not bound by many of the rules and regulations established for standard interagency coordination. For example, whereas agencies such as SHPO must ordinarily respond to written, policy level correspondence within 30 days, tribes are under no such time constraints. Consequently, time frames for consultation may vary widely, and according to federal statute tribes may enter the consultation process at any time. However, both FHWA and CDOT prefer to initiate contact early in the planning stages of a project in order to encourage tribes to enter the consultation process in a timely fashion.

Detailed information regarding Native American consultation must be present in the EA or EIS, but must not contain information considered sensitive or privileged by a tribe. A separate subheading for consultation under the Historic and Archaeological Resources section is generally the most appropriate location for this information. The CDOT Senior Staff Archaeologist will, in most cases, provide the consultant with language specific to the consultation process for inclusion in the NEPA document.