

ARCHAEOLOGICAL, HISTORICAL, AND PALEONTOLOGICAL RESOURCES



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ARCHAEOLOGICAL, HISTORICAL, AND PALEONTOLOGICAL RESOURCES

Cultural resources are resources that are typically at least 50 years old and include (but are not limited to) everything that is man made. The vast range of resources considered “historic” includes everything from historic bridges to ancient tribal burial grounds, to an old barn, a Quonset hut, or even a trailer park. The most common resources that could be affected by transportation projects are bridges, buildings, landscapes, and archaeological sites. Federal laws have been enacted to require federal agencies to identify and protect cultural resources and to determine whether a proposed federal action, if it is defined as an “undertaking,” has the potential to cause “effects” upon historic properties. An agency will evaluate the undertaking and determine if the project would have “no adverse effect” or an “adverse effect” on cultural resources.

21.1 Section 106 at DDOT

In the District of Columbia, the process begins with the identification of the type of project. The District of Columbia Department of Transportation (DDOT) has set up a citywide

Section 106 Programmatic Agreement (PA) with the Federal Highway Administration (FHWA), District of Columbia Historic Preservation Office (DCHPO), and Advisory Council on Historic Preservation (ACHP). This PA has a list of activities/projects that do not require further review by DCHPO. The projects included in the PA are:

- Roadway surface replacement, reconstruction, overlays, shoulder treatments, pavement repair, seal coating, pavement grinding, and pavement marking where there will be no expansion, provided these activities occur within curb to curb with no change in materials or the character/design of the cross-section.
- Bridge reconstruction and rehabilitation, which does not include roadway widening or modification of existing piers and abutments, but which may include bridge repairs, deck replacement or repair, railing repair, painting and other maintenance work, excluding historic bridges or bridges more than 40 years old.

- Replacement or extension of culverts and other drainage structures with waterway openings of 100 square feet (9.3 square meters) or less and that do not extend beyond previous construction limits.
- Installation of new lighting, signals, and other traffic control devices, and replacement or repair of lighting, signals, and traffic control devices where the existing units were installed less than 50 years ago.
- Installation of new lighting, signals, and other traffic control devices, and replacement or repair of lighting, signals, and traffic control devices in historic districts where DDOT historic district street light policy is used.
- Installation, replacement, or repair of safety appurtenances such as guardrails, barriers, glare screens, and energy attenuators, except on National Register listed or previously determined eligible bridges, properties, or districts.
- Temporary construction fencing, including salvage yards, provided no grading or other landscaping is involved.
- Replacement in kind of landscaping within the DDOT Right-of-Way and on fillslopes and backslopes only.
- Repair or replacement in kind of curbs, gutters, and catch basins.
- Repair or replacement in kind of sidewalks and access ramps.
- Signs, signal installation, or modification and surface improvements to existing railway/transit crossings.
- Emergency structural repairs to maintain the structural integrity of a bridge, unless the bridge is listed on or determined eligible for listing on the National Register.
- Placement of fill material on the side of slopes of intersection crossroads and accesses for purposes of flattening these slopes to meet safety criteria, provided that no topsoil is removed beyond the area of previous horizontal and vertical disturbance.
- Hazardous waste removal and disposal from within an area previously disturbed by vertical and horizontal construction activities that constitute a public hazard and require immediate removal.
- Placement of riprap materials within an area previously disturbed by vertical and horizontal construction activities to prevent erosion of waterways and bridge piers excluding historic bridges.
- Routine roadway, roadside, and drainage system maintenance activities necessary to preserve existing infrastructure and maintain roadway safety, drainage conveyance, and stormwater treatment in previously disturbed areas.

If a project meets the criteria of any of the above-listed activities from PA, then that project does not need any further consultation with DCHPO. Such projects are approved by the Project Development and Environment (PDE) Division environmental program staff (or designee) for Section 106 compliance and the Section 106 process is considered completed. PDE environmental staff determine if a DDOT project qualifies for approval under the PA. All projects approved (processed) under this PA have to be included in the annual Section 106 PA report submitted to DCHPO, ACHP, and FHWA. This report is submitted by the PDE environmental program staff. DCHPO may determine a project not eligible for approval under the Citywide PA.

If a project does not qualify for approval under the citywide PA, then the next step is the identification of cultural resources listed or eligible for the National Register for Historic Places (NRHP) within a proposed transportation project area (referred to as an Area of Potential Effect [APE], as defined later in this chapter). The DCHPO, also called State Historic Preservation Office (SHPO), publishes a historic sites map called “The District of Columbia Inventory of Historic Sites.” This map is an excellent resource for identifying listed historic/cultural resources. The DCHPO staff is also consulted for additional resources identification.

Depending upon the size and scale of a project, additional investigations may be needed, such as field investigations, to determine the resources that may not be listed but may be eligible for nomination in the NRHP.

Once the resources are identified, then the potential effects of the proposed project on cultural resources are evaluated. DCHPO staff is consulted in this process. DDOT also uses consultants for this process.

If it is determined that the project will not have any effect on the cultural resources (listed and eligible) or that the project will have no adverse effects on the resources, then the DCHPO staff is consulted. If the DCHPO staff concurs with the “no effect” or “no adverse effect” finding, then the Section 106 process is completed by submitting a Section 106 No Adverse Effect Letter from FHWA to DCHPO. Once DCHPO signs off on the concurrence letter, the Section 106 process is completed.

If the project is determined to have adverse effects, then the potential mitigations have to be determined and agreed. An adverse impact finding requires a series of steps that are explained in 36 Code of Federal Regulations (CFR) 800. The process outlined in the 36 CFR 800 has to be used.

A Memorandum of Agreement (MOA) or a PA completes the process in this case. Coordination with the DCHPO, FHWA, the ACHP, consulting parties (the National Park Service [NPS], the U.S. National Capital Planning Commission [NCPC], the U.S. Commission of Fine Arts [CFA], and the Architect of the Capitol [AOC]), and the general public may also be needed. Such agency and public involvement occurs, as warranted, during the identification of resources and during the planning process to minimize and mitigate adverse effects. DDOT staff or consultants prepare and distribute reports as required by law and regulations.

21.2 Applicable Regulations

Many federal laws exist to protect cultural resources. Following is a brief description of the federal laws and regulations that are pertinent to cultural resources in the District of Columbia. The list is not comprehensive; rather, it focuses on the laws that DDOT staff would most likely consider for transportation projects.

21.2.1 Federal Legislation and Regulations

- **16 USC 470(aa)–(mm), Archaeological Resources Protection Act of 1979 (ARPA), as amended.** This regulation preserves and protects paleontological resources, historic monuments, memorials, and antiquities from loss or destruction.
- **16 USC 470 et seq., National Historic Preservation Act of 1966 (NHPA), as amended.** This Act establishes a program for the preservation of additional historic properties nationwide.
- **42 USC 1996 and 1996a, American Indian Religious Freedom Act of 1978 (AIRPA).** The AIRPA protects places of religious importance to Native Americans, Eskimos, and Native Hawaiians.

- **25 USC 3001-3013, Native American Graves Protection and Repatriation Act of 1990 (NAGPRA).** This Act protects human remains and cultural material of Native Americans and Native Hawaiian groups.
- **36 CFR 800, Protection of Historic Properties as revised and reissued with an effective date of January 11, 2001.** Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties and affords the ACHP a reasonable opportunity to comment on such undertakings.
- **43 CFR 7, Protection of Archeological Properties.** This regulation implements provisions of the Archaeological Resources Protection Act of 1979, as amended (16 USC 470aa–mm).
- **36 CFR 60, National Register of Historic Places.** This regulation authorizes the Secretary of the Interior to expand and maintain an NRHP that includes districts, sites, buildings, structures, and objects that are significant in American history, architecture, archaeology, engineering, and culture.
- **36 CFR 63, Determinations of Eligibility for Inclusion in the National Register of Historic Places.** This code describes the process for listing properties on the NRHP.

21.2.2 District of Columbia Legislation and Regulations

In addition to federal laws and regulations, laws and regulations exist that are specific to the District of Columbia.

- **Historic Landmark and Historic District Protection Act of 1978, DC Law 2-144, as amended.** This Act protects historic landmarks and historic districts in the District of Columbia.

- **Historic Preservation Regulations (10DCMR Title 10A).** This regulation combines all historic preservation regulations into a new subtitle DCMR 10A.

The full text of the Act and regulations can be found at the DCHPO website: <http://planning.dc.gov/planning/site/default.asp> by clicking on the Historic Preservation link, then following it to Laws and Regulations.

21.2.3 Guidance Documents

The NPS, United States Department of the Interior, is the primary federal agency responsible for the conservation and protection of natural and cultural resources. NPS has issued numerous bulletins that provide standards and guidance to identify, evaluate, document, rehabilitate, preserve, and restore historic buildings, sites and structures, and archaeological resources.

- **The Secretary of the Interior Standards and Guidance for Archeology and Historic Preservation.** These standards have three purposes: to organize the information gathered about preservation activities; to describe the results to be achieved by federal agencies, states, and others when planning for the identification, evaluation, registration, and treatment of historic properties; and to integrate the diverse efforts of many entities performing historic preservation into a systematic effort to preserve the nation's cultural heritage.
- **62 CFR 33708, The Secretary of the Interior Proposed Historic Preservation Professional Qualification Standards, June 20, 1997.** These standards are designed as a tool to help recognize the minimum expertise generally necessary for performing professionally credible historic preservation work.

- **36 CFR 67, The Secretary of the Interior Standards for Rehabilitation.** These standards apply to historic buildings of all periods, styles, types, materials, and sizes.
- **The Secretary of the Interior Standards for Architectural and Engineering Documentation.** This bulletin describes the standards and guidelines for developing acceptable documentation on historic buildings, sites, structures, and objects, for inclusion in the Historic American Buildings Survey (HABS) and the Historic American Engineering Record (HAER) collections.
- **The Secretary of the Interior Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings.** These standards are intended to promote responsible preservation practices to help protect irreplaceable cultural resources.

21.2.4 Interagency Programmatic Agreements

DDOT has recently signed a PA with FHWA, DCHPO, and ACHP to address Section 106 compliance for the implementation of a federal highway program in the District of Columbia. The PA addresses reconstruction and other activities with regard to existing bridges and interchanges, the replacement of curbs, and signage and other related work, as well as DDOT Section 106 responsibilities. The actions covered in the PA are discussed in the earlier section of this chapter. A copy of the PA is included in the References section.

21.2.5 Related Regulations

In addition to Section 106 of the NHPA, DDOT also must consider the impacts of a project according to the law and regulations of Section 4(f) as described below.

49 USC 303, Department of Transportation Act of 1966, Section 4(f). This legislation states that “special effort [is] to be made to preserve the natural beauty of the countryside, and public park and recreation lands, wildlife and waterfowl refuges, and historic sites.” Historic sites include historic or archaeological sites on or eligible for inclusion on the NRHP. The proposed use of Section 4(f) property requires the agency to evaluate potential impacts early in the project development when alternatives to the proposed action are under study. Section 106 compliance must be substantially completed before processing a Section 4(f) evaluation. Chapter 10, The Categorical Exclusion, includes a full review of Section 4(f). FHWA Technical Advisory T 6640.8A, Section V also includes more details on Section 4(f).

21.2.6 Primary Legislation

The two primary laws that apply to transportation projects and their impacts to cultural resources are:

- Section 106 of the National Historic Preservation Act (NHPA)
- Section 4(f) of the Department of Transportation Act

Cultural resource investigations are conducted for compliance with Section 106 of NHPA, as amended (codified as 36 CFR 800), with Section 4(f) of the Department of Transportation Act of 1966 (codified as 23 United States Code [USC] 771), and with the National Environmental Policy Act (NEPA). This chapter focuses on the NHPA: Section 4(f) is described in Chapter 22, Section 4(f) – Recreation Areas, Historic Sites, Wildlife and Waterfowl Refuges.

Cultural resources include prehistoric and historic archaeological sites and historic bridges, buildings, sites, objects, and districts. The purpose of cultural resource investigations is to consider the impact of federally funded

undertakings on properties, sites, buildings, structures, and objects that are listed in or eligible for inclusion in the NRHP. The criteria of adverse effect, the standard by which effects to historic properties are measured, are included in 36 CFR 800.

A historic property, as defined in regulation 36 CFR Section 800.16(l)(1), is any cultural resource included in or eligible for inclusion in the NRHP. A cultural resource is eligible for listing in the NRHP if it meets one or more of the four NRHP criteria and retains sufficient integrity to convey historic significance. The NRHP criteria state that the quality of significance is present in cultural resources when resources:

- Are associated with events that have made a significant contribution to the broad patterns of our history
- Are associated with the lives of persons significant in our past
- Embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction
- Have yielded or may be likely to yield information important in prehistory or history

In addition to significance, a property must also have integrity of location, design, setting, materials, workmanship, and feeling to be eligible for inclusion in the NRHP. This means that not only must a resource be old, but it also must retain many of its original features and be significant under one or more of the four criteria listed above. Ordinarily, the following types of cultural resources are not eligible for listing in the NRHP—religious properties, moved properties, birthplaces or graves, cemeteries, reconstructed

properties, commemorative properties, and properties that have achieved significance within the last 50 years. Such resources, however, may be eligible for inclusion in the NRHP, for example, if they are an integral part of an eligible district or for other reasons that are outlined in the NRHP regulations (36 CFR 60).

Two types of cultural resources need to be identified to satisfy the requirements of Section 106 of the National Historic Preservation Act of 1966: architectural/historical resources (buildings and structures) and archaeological resources (buried artifacts and remains of aboveground structures). For its projects, DDOT conducts the Section 106-required studies for FHWA.

The oversight of the archaeological and architectural/historical studies needed to satisfy Section 106 belongs to the environmental staff in DDOT. Typically, the environmental staff will work with the project manager to contract the work to a consultant whose staff meet the professional qualification requirements of the Secretary of the Interior.

The purpose of the studies is to identify architectural/historical resources or archaeological sites that are listed in or eligible for listing in the NRHP and to assess the effects of a project on such resources. The first step in this process is to define the Area of Potential Effect (APE). The APE of a project is defined in 36 CFR 800.16 (d) 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.” The APE for architectural/historical resources will differ from the APE for archaeological resources. For example, the architectural/historical resource APE for a highway improvement project may encompass areas that:

- Could be affected by noise
- Could be affected by traffic increases
- May have changes in access
- Are within the viewshed of the proposed improvements
- Would be physically affected by the project

Only areas of direct physical impact would be considered as the APE for an archaeological survey. However, the archaeological APE could include areas of construction staging, borrow, or cut and fill. In addition, construction staging areas and borrow areas could be considered to be within the APE for historic resources.

Within the framework of the Section 106 process, the impact analysis is referred to as the “determination of effect.” Functional or conceptual plans, or other more detailed plans, are needed to undertake the effects assessment.

Effects determinations are made by applying the Criteria of Adverse Effects, as defined in 36 CFR 800.5, to each identified NRHP-listed or -eligible resource. This involves the consideration of several factors, including whether the project will alter the characteristics that qualify the historic property for inclusion in the NRHP. In accordance with Section 106, a project can result in No Historic Properties Affected, No Adverse Effect, or an Adverse Effect. No Historic Properties Affected indicates that a project will not affect the characteristics or qualities of an NRHP-listed or -eligible resource. No Adverse Effect indicates that a project has an effect on a historic resource, but that this effect does not affect the historic characteristics or qualities of the resource. Adverse Effect indicates that a project has a negative effect on a resource.

If resources are potentially adversely affected, DDOT must seek ways to avoid, minimize, or mitigate impacts through the consultation process, which is described below.

Any NRHP-listed or -eligible architectural/historical resources or archaeological site is also a Section 4(f) site and must be included in any Section 4(f) analysis that is developed (see Chapter 22).

21.3 Agency Coordination and Public Involvement

The NHPA requires the FHWA or its designee (in this case DDOT) to identify the appropriate parties that need to be involved in the process of identifying effects of a proposed project to historical resources and working through the process with such parties. This “involvement” is referred to as “consultation.”

Generally, the first outreach effort to the DCHPO, local government agencies, and known parties with historic preservation interests occurs in the NEPA initial coordination stage. Native American tribes would be included at this time, but no tribes are recognized within the District of Columbia.

The project manager will prepare or will assist the environmental coordinator or consultant in preparing a Section 106 initial coordination mailout. The mailout package includes:

- A cover letter requesting the recipient to provide comments on the project and its potential impacts to architectural/historical and archaeological resources
- A project description, including route name and number, termini, length of proposed improvements, and alternatives to be studied
- The project purpose including discussion of deficiencies such as safety and level of service
- A description of study area, including identification of neighborhoods, wards, and Advisory Neighborhood Commission (ANC) where the project is proposed

- A general description of the build alternative(s), including typical cross-sections, function classification of existing and future roadway, and modal connections
- A vicinity and a project location map

Consultation is required with the DCHPO. In addition, the ACHP must be afforded a reasonable opportunity to comment on the undertaking. The Section 106 regulations also require the federal agency or its designee to consult with certain other entities and involve the public in the process of assessing the effects of a project to historical resources.

As a result of DDOT's NEPA initial coordination mailout to historical groups known to have an interest in the area or through other correspondence or meetings, additional parties may be identified and invited by the agency to serve as consulting parties. The decision regarding the designation of additional consulting parties ultimately lies with FHWA.

The second phase of outreach occurs after technical studies have been completed. (In both the historic and archaeological areas, studies are or can be phased. If that is the case, outreach should occur after each phase.) As applicable, the completed technical study will be sent by the environmental coordinator to the DCHPO for review and comment. A copy of the cultural resource study, the management summary, or a pertinent study excerpt will be sent to all Section 106 Consulting Parties, and to the ACHP if adverse effects are identified under 36 CFR 800. If adverse effects are found, DDOT must work with the DCHPO, the ACHP if it chooses to participate, and Section 106 Consulting Parties to look at ways to avoid, minimize, or mitigate project effects. The measures agreed upon are included in an MOA, which is a legally binding document and is signed, at a minimum, by the FHWA, DCHPO, and any cooperating federal agencies, and concurred with by DDOT. FHWA may also invite other parties to sign the

MOA as concurring parties. The implementation of the measures included in an MOA is discussed in Section 21.7.

21.4 Study Process for Architectural/Historical Resources

The architectural/historic study can begin as early as the environmental screening phase. The goal of the study is to identify resources that are listed in or eligible for listing in the NRHP and identify effects to such resources, pursuant to 36 CFR 800. The study is typically undertaken by consultants. Early identification of significant cultural resources can assist in the selection of project alternatives by screening out alternatives that could adversely impact cultural resources.

A records search is required to identify previously surveyed historic properties in the proposed project corridor, to identify NRHP-listed or previously determined eligible historic resources, and to identify whether any properties in the project corridor are currently under consideration for nomination to the NRHP. This research can help in establishing the alignment and serves as the basis for fieldwork to be conducted in the project corridor. A literature review and research are also conducted to provide historic background, or context, of the project area. The historic context provides a basis against which cultural resources may be evaluated using the NRHP Criteria of Evaluation.

At the completion of the records review, a field survey is undertaken. The purpose of the architectural survey is to identify properties in the project vicinity that are either listed in, or eligible for listing in, the NRHP. The architectural historian will survey an area large enough to encompass all historic properties within the APE associated with the project.

While it is not necessary to inventory every structure that is at least 50 years old in the APE, the architectural historian should inventory any potentially historic properties in the APE. If there are properties either listed in or potentially eligible for listing in the NRHP (even if they are not being affected) in the immediate vicinity of the project impact area, these should be inventoried. Two primary reasons for this are to fulfill FHWA responsibilities under NEPA and NHPA by illustrating to the public and agencies that DDOT has an awareness of the existence of the property in proximity to the project and to assist in developing project modifications and alignment shifts needed to avoid other sensitive areas (including historic, ecology, or hazardous materials concerns).

The survey report should provide an architectural description of each inventoried property, general historical information about it, and a brief discussion of each support building (historic and modern). For each property, the report author must provide an opinion regarding its NRHP eligibility. For all listed or eligible resources, the existing or potential NRHP boundaries must be illustrated on a map. The historical/architectural survey must be coordinated with the DCHPO.

Following the survey, the findings regarding NRHP eligibility will be compiled in a report that is submitted to the DCHPO for review and concurrence. Sometimes the survey data are presented in a standalone report, which is submitted to the DCHPO for concurrence with the NRHP eligibility findings and boundaries. At other times, the survey report is combined with the assessment of effects report; the latter can also be submitted as a standalone report. In any case, the DCHPO must comment on the findings of effect, and the comment letter must be included in an appendix of the NEPA document. Typically, both architectural and

archaeological resource reports are combined into one report for review.

The Section 106 regulations allow 30 days for the report review to occur; however, the DCHPO can respond within that 30-day period and request additional information or disagree with the report findings. This can substantially increase the review time.

For each project alternative, an evaluation of potential impacts to architectural resources within the APE is made. Depending on the severity of the impacts and the significance of the resource, this evaluation could be a factor in determining the selection of a preferred alternative. If adverse effects are found with the preferred alternative, the environmental coordinator will work with the project manager to coordinate the effort to examine ways to avoid, minimize, or mitigate project effects with the DCHPO, the ACHP, if it is participating, and the Section 106 Consulting Parties. All measures agreed upon are included in an MOA, a legally binding agreement prepared pursuant to Section 106 if properties will be adversely affected by a project. A copy of the fully executed MOA must be included in an appendix of the final NEPA document.

Section 6007 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) includes a provision that exempts the bulk of the Interstate System from consideration as historic property under Section 106 and Section 4(f), provided the portion of the system plays an integral component of the entire system. This is important given that the Interstate System is over 50 years old and could be eligible for historic designation. However, under Section 106, certain elements of the interstate system, such as bridges, tunnels and rest stops can be excluded from the above-discussed exemption if designated by FHWA as “exceptionally significant features (ESF)” from a historic perspective. In December 2006, the

FHWA published the list of ESF in the Federal Register. The list can be found at http://www.environment.fhwa.dot.gov/histpres/highways_list.asp. There are no designated ESF in the District of Columbia that need to be treated as historic properties.

21.5 Study Process for Archaeological Resources

The process for the identification and evaluation of archaeological resources is similar to that of architectural resources. Typically, these activities are conducted concurrently. The archaeology study can begin in the environmental screening phase for a corridor study or whenever functional or more detailed conceptual plans are available. The goal of the study is to identify resources that are listed in, or eligible for listing in, the NRHP and identify effects to such resources, pursuant to 36 CFR 800.

The first step in the survey process entails examination of historical and archaeological records and literature with the intent to identify previously recorded resources and develop cultural/historical contexts that may be important to understanding the resources of the area. The records check includes examination of the site survey forms at the DCHPO.

The second step involves fieldwork, which is almost always undertaken by a consultant. Prior to commencing work, the consultant is required to contact landowners for access to their property prior to the survey. This survey will involve a visual inspection, a systematic pedestrian examination of exposed ground surfaces, and shovel testing of land having poor surface visibility. Limited deep soil sampling to ascertain whether buried archaeological deposits are present is also required. The completion of site survey forms is required for all identified archaeological sites.

The data collected will be analyzed and then the findings of the literature search, fieldwork, and analysis are presented in a written report. The report must present sufficient information to allow evaluation of whether additional investigation is warranted to determine NRHP eligibility. This report will be reviewed by the project manager or the environmental coordinator and then, through the FHWA, sent to the Consulting Parties for a 30-day review period as provided in the regulations. Typically, the report includes results of the surveys, evaluation of historic significance for the resources identified, and determination of impacts for both architectural and archaeological resources. After questions and comments about the report are addressed, a final report is prepared and distributed to the consulting parties.

The Phase I Archaeological Survey (consisting of the two steps described above) not only identifies archaeological resources listed or eligible for inclusion in the NRHP, but also identifies archaeological resources requiring additional testing to evaluate their NRHP eligibility.

Between the Environmental Assessment (EA)/Draft Environmental Impact Statement (EIS) and Finding of No Significant Impact (FONSI)/Final EIS/Record of Decision (ROD), if it is determined that a site or sites on the selected alignment require additional testing, it is DDOT policy to attempt first to avoid the sites. The environmental coordinator works with the project manager to determine whether the subject site or sites can be avoided. If it is not feasible to avoid the sites, Phase II testing of the sites identified in Phase I will occur within the proposed right-of-way limits. The Phase II work, which must be completed prior to the approval of the FONSI or Final EIS/ROD, is almost always undertaken by a consultant. Phase II typically focuses on excavation of 15 to 20 percent of the site area within the right-of-way, often employing the use of heavy

equipment to determine whether undisturbed archaeological deposits are present that would meet the NRHP eligibility criteria. Right-of-way will not yet have been purchased. If an amicable arrangement cannot be made with the landowner to conduct the archaeological work on the site, the process will be carried forward by the DDOT legal office.

The fieldwork could include clearing, plowing and disking the direct impact zone to enhance surface visibility and then conducting controlled surface collection and subsurface excavation. The artifacts collected are then analyzed in the laboratory. The Phase II findings are presented in a report, which evaluates the NRHP eligibility of the site and provides recommendations for future work. If the site cannot be avoided, justification must be presented for suggested mitigation measures. If a site is considered NRHP eligible and recovery of significant data is recommended, a preliminary research design and data recovery plan must be included in the report. The Phase II testing report is distributed by FHWA to the consulting parties for a 30-day review in accordance with the Section 106 regulations.

As with architectural resources, the process includes identification and evaluation of potential effects of the project alternatives. If, with the selection of a preferred alternative, NRHP resources are adversely affected, FHWA, DDOT, DCHPO, and consulting parties must examine ways to avoid those effects. If avoidance is not feasible, then DDOT or the consultant must develop a plan for minimization and mitigation of adverse effects. Typically, archaeological mitigation involves excavation for the recovery of significant information. All of the measures to be taken to minimize and mitigate the adverse effects of a project are stipulated in an MOA. An MOA is typically prepared for the agreed mitigation measures for both architectural and archaeological resources; only one document is needed.

Once approved by the FHWA and the DCHPO, DDOT implements the agreed-upon measures.

Any mitigation agreed upon will be described in an MOA, which must be included in an appendix to the NEPA document. Archaeological mitigation measures may involve archaeological data recovery, which is referred to as Phase III, or Recovery of Significant Information (RSI). Phase III is most often undertaken after land has been acquired. All mitigation work must be completed before FHWA will authorize construction. The DCHPO must also be notified when the fieldwork has been completed and offered the opportunity to conduct an inspection.

Precise archaeological location data (written descriptions and maps) are not made available to the public to eliminate the distribution of this information to potential “treasure hunters” and to diminish the potential of looting of archaeological sites.

21.6 Paleontological Resources

Paleontological resources are not technically cultural resources; however, for NEPA purposes, they are included as part of the cultural resources sections. DDOT construction projects and maintenance activities must be evaluated to determine if paleontological resources will be impacted. The project manager, in conjunction with the environmental coordinator, is responsible for initiating a literature review, determining the potential presence of paleontological resources within the project area, developing reports, and coordinating with the FHWA and the DCHPO. DDOT may request technical assistance from the DCHPO. The project manager, in conjunction with the environmental coordinator, usually supported by a consultant, coordinates these items for review and for final clearances before the project is awarded.

The environmental coordinator is responsible for the following documentation:

- Preparation of paleontological resource assessment report
- Preparation of the mitigation plan in cooperation with the project manager and the environmental coordinator (may not be required for all projects)
- The following procedure is used to conduct a paleontological resource evaluation:
 - Perform literature search
 - Determine the potential for the presence or absence of paleontological resources
 - Conduct analysis to determine the scientific significance (research and/or educational value) of the resource
 - Determine if there is any potential for additional resources
 - Prepare a paleontological assessment report
 - Develop mitigation plan in cooperation with the project manager (if required)
 - Coordinate with FHWA and the DCHPO (if required)
- Include a discussion in the EA or EIS for the potential of finding paleontological resources and potential impacts associated with each of the project alternatives

21.7 Implementing Commitments

In the area of cultural resources (historic/architectural resources and archaeological resources), commitments may be made when it is found that a resource listed in or eligible for the NRHP will be affected by a proposed project. Federal laws, such as Section 106 of the NHPA and Section 4(f)

of the Department of Transportation Act, require agencies that are proposing federally funded or permitted projects to explore alternatives to avoid or reduce harm to historic properties.

Once an adverse effect has been identified, DDOT will work with the DCHPO, the FHWA, the ACHP (if it chooses to participate), and the public (including Section 106 Consulting Parties) to develop methods to avoid, minimize or mitigate impacts. Agreed-upon minimization and/or mitigation measures will be funded through the project and are often included in a legally binding MOA. This agreement is signed by FHWA and DDOT and is concurred with by DCHPO. On occasion, other parties that have obligations under the MOA also will sign the agreement. DDOT and FHWA will ensure that all commitments made in the MOA or in the Section 106 Effects Assessment are carried out.

Examples of such commitments include:

- Preparing documentation for the Historic American Building Survey (HABS) or Historic American Engineering Record (HAER)
- Relocating a historic structure such as a building or bridge
- Landscaping to serve as a visual screen
- Special surface treatment on retaining walls
- Recovery of Significant Information (RSI/Phase III archaeology)

FHWA will not authorize right-of-way funding until the final NEPA document is approved and the necessary MOA is fully executed.

21.7.1 Implementing Architectural/ Historical Commitments

Once commitments have been made either in an MOA or in a Section 106 Effects Assessment, the environmental coordinator leads the effort for carrying forward the commitments. When an MOA is fully executed, the environmental coordinator sends a copy of the agreement to the project manager accompanied by a letter that outlines the actions that must be taken. When there is no MOA, any commitments made are outlined in a letter.

The preparation of HABS/HAER documentation is led by the environmental coordinator and is usually completed by a contractor. The level of the HABS/HAER documentation required is typically agreed upon in the MOA with DCHPO concurrence. The environmental coordinator ensures that the documentation is completed prior to contract letting and provided to appropriate repositories (DCHPO, National Archives, and/or public libraries).

The environmental staff should be on the distribution list for right-of-way plans. Once received, the plans are reviewed to ensure that the design measures included in the MOA are included on the plans and plan specifications. The environmental coordinator then sends a letter to the project manager commenting on the plans and reiterating design commitments. This letter will often request that notes be added to plans delineating historic properties and requesting that such areas not be used for construction staging or right-of-way easements. Normally, the construction plans are not reviewed; however, if there are items of concern that the environmental staff wants to track, a request will be made that the environmental coordinator be sent construction plans and be notified of the preconstruction meeting.

21.7.2 Implementing Archaeological Commitments

All Phase I and Phase II archaeological work is undertaken during the NEPA process and is completed by the time the final NEPA document is approved. During this process, DDOT attempts to avoid impacts to archaeological sites. When avoidance is not feasible, DDOT will implement design modifications to minimize project effects and may enter into an MOA that will include a commitment to conduct RSI/Phase III Data Recovery. If there are mitigation commitments for architectural/historical resources, the archaeological commitments are included in the same MOA. If there are no architectural mitigation measures required, an MOA will be executed just for the archaeological work.

If an MOA that stipulates RSI, the fieldwork generally begins as soon as possible following approval of the final NEPA document and acquisition of the property. If a landowner is cooperative, fieldwork sometimes begins before property acquisition. Generally, DDOT contracts the RSI work to the archaeological contractor that completed the Phase I and II tasks. Once the fieldwork for the data recovery task is completed, DDOT notifies the DCHPO and provides it with an opportunity to inspect the site. Artifacts collected will be stored in a facility identified and agreed upon in the MOA. The environmental coordinator notifies the project manager when the RSI work has been completed.

21.8 Additional Information

Websites

Many useful Internet links exist that can assist DDOT staff and consultants. The following links provide detailed information, such as specific legislation language, the text for NPS technical bulletins, and so on. This list includes the most significant links for cultural resources related to the District of Columbia.

- Advisory Council on Historic Preservation,
<http://www.achp.gov/>
This site provides links to find specific legislation, regulations, and standards, as well as to other SHPOs, PAs, the Nationwide PA on Transportation Enhancements, and other pertinent information.
- American Cultural Resource Association (ACRA),
<http://www.acra-crm.org/>
This website for cultural resource professionals provides information on consultants, their specialties, and geographic locations. It also provides links to all SHPOs.
- DCHPO, *<http://planning.dc.gov/planning/cwp/view,a,1284,q,570741,planningnav,33515/,asp>*
This website offers information on specific laws and regulations related to historic resources in the District of Columbia. In addition, it details information on historic districts, Section 106 procedures, and an index of historic sites and maps in the District of Columbia.
- Federal Highway Administration,
<http://www.fhwa.dot.gov>
This site provides information on cultural resources, significant guidelines and standards, and an FHWA environmental handbook that includes a section on cultural resources. The PA on Transportation Enhancement also links to this site. Find the FHWA NEPA Guidance for Preparing Documents at: *<http://environment.fhwa.dot.gov/projdev/index.asp>*
- National Park Service (NPS) has numerous links that provide a wealth of information on cultural resources:
 - Laws, Regulations and Standards:
<http://www.nps.gov/legacy/legalstuff.html>
 - National Register for Historic Places information:
<http://www.cr.nps.gov/nr/index.htm>
 - NPS Technical Assistance:
http://www.nps.gov/ncrc/programs/rtca/contactus/cu_apply.html
 - NPS Publications:
<http://www.nps.gov/aboutus/publications.htm>