

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

Table of Contents

Introduction.....	1
Federal Laws and Regulations.....	1
State Laws and Regulations.....	2
The Section 106 Process.....	1
Definition of “Undertaking”.....	2
STEP 1: Initial Consultation with Participants in Section 106.....	2
STEP 2: Identification of Historic Properties.....	2
Determine Undertaking’s Area of Potential Effects (APE).....	3
SHPO Concurrence with Determinations of Eligibility.....	3
STEP 3: Assessment of Adverse Effects.....	4
No Adverse Effect and Adverse Effect.....	4
STEP 4: Resolution of Adverse Effects.....	5
Memoranda of Agreement.....	5
Streamlining Initiative.....	5
Section 106 Programmatic Agreement.....	5
Requesting Archaeology and History Surveys from CDOT Staff.....	6
Process for Requesting and Completing Historical Resource Clearances.....	6
Information Required to Initiate a Historical Clearance.....	7
Process for Requesting and Completing Archaeological Resource Clearances...	7
Information Required to Initiate an Archaeological Clearance.....	7
Requirements for Consultants Conducting Historic and Archaeological Surveys.....	8
Required Documentation.....	9
Consultant Minimum Qualifications.....	9
Information Required in NEPA Documents.....	10
Native American Consultation Procedures.....	10

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 effects, and consult directly with the State Historic Preservation Officer (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 – up to 320 calendar days

No Adverse Effect – approximately 100 calendar days

No Historic Properties Affected – approximately 100 calendar days

Definition of “Undertaking”

Based on the Section 106 regulations, an “undertaking” is defined as “a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.”

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, a historical clearance should be discussed with the Senior Staff Historian, Region 4 or 6 Historians, or Senior Staff Archaeologist, as applicable.

STEP 1: Initial Consultation with Participants in Section 106

The CDOT Region Planning and Environmental Manager (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 or Region historian 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. For large scale projects, the Mountains/Plains office of the National Trust for Historic Preservation and Colorado Preservation, Incorporated will be invited to participate in the Section 106 process.

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 of Historic Places (NRHP) 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, Region Historians, or Senior Staff Archaeologist, as well as the 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)].

Development of an initial APE by consultant staff must be completed 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 necessarily 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, Region 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 assumes the

SHPO has no comments. 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/Region Historian/Senior 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 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 has no comments on the finding and proceed with the project. Findings of *no adverse effect* need to be evaluated to determine if a Finding of Section 4(f) *de minimis* is applicable. The process for Section 4(f) compliance is addressed in a separate document.

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 properties 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. “Creative mitigation” should also be considered. These options can include, but are not limited to, educational outreach and interpretive mitigation such as brochures, signage, displays, historic contexts, and other measures developed in consultation with SHPO and consulting parties. 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 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, a Memorandum of Agreement (MOA) is developed that outlines agency responsibilities to avoid, minimize, or mitigate adverse effects. In virtually all cases, CDOT Cultural Resources Section staff develop and facilitate project-specific MOA’s. Similar to resources in the historic built environment, National Register eligible or listed archaeological sites, which were exempt from this process prior to 1999, are also subject to development of an MOA prior to data recovery excavations. If the ACHP elects 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 Initiative

Section 106 Programmatic Agreement (Section 106 PA): Executed in May 2010, the Programmatic Agreement outlines the Section 106 process carried out by CDOT on behalf of the Federal Highway Administration. The agreement replaces the Minor Highway Improvement Projects Programmatic Agreement (1991), the Section 106/State Register Act Procedures Memorandum of Agreement (1996),

the Historic Bridge Programmatic Agreement (2003), and the Negative Finds Memorandum of Understanding (1989). The PA outlines the steps in the Section 106 process and provides guidance for projects that do and do not require consultation with SHPO and consulting parties. Also included are stipulations regarding consultation with Native American Tribes, treatment of Native American human remains, use of the Interstate Highway Exemption, guidelines for the development of historic bridge inventories, and attachments that outline CDOT's typical procedures for delineating the Area of Potential Effects and documenting linear resources. In addition, the PA includes a stipulation for exempted projects designed to increase the efficiency of the Section 106 process. Known as "screened undertakings," these actions have effects to historic properties that are foreseeable, likely to be minimal or are not adverse, or will have no effect at all. The PA outlines an internal review process for determining whether projects are exempt from further review, and also provides a detailed list of the types of screened undertakings that may be exempt from further Section 106 and consultation with SHPO and consulting parties.

The Senior Staff Historian, Region 4 or 6 Historian, and/or Senior Staff Archaeologist will determine how the Section 106 PA applies to projects, and will prepare a memorandum to the appropriate Region that references the project and the relevant section of the PA. This memo serves as the clearance required for historic properties. Depending on the complexity of the project, clearances may also be conveyed via electronic mail.

Internal (CDOT) Requests for Archaeology and History Surveys by CDOT Staff

For most Categorical Exclusions and other types of smaller-scale undertakings, the Senior Staff Historian, Region 4 or 6 Historians, 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 archival research, a field 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 CDOT HQ and Region Historians, and on rare occasions by the Senior Staff Archaeologist. Copies of all correspondence will be forwarded to the RPEMs for their files. *Aside from the Regions 4 and 6 Historians, Region staff should refrain from directly contacting the SHPO or other oversight agencies at any point in the project development or implementation process. All interagency coordination in that regard will be completed by EPB staff, in coordination with FHWA.*

Process for Requesting and Completing Historical Resource Clearances

Region Planning and Environmental Managers (RPEMs) are encouraged to contact the Senior Staff Historian or appropriate Region 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 and Certified Local Governments (CLG's) if they have jurisdiction within the project area.

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 or appropriate Region Historian if a project has the potential to affect historic resources—generally projects that require easements or right-of-way where buildings, irrigation ditches, railroad lines, or similar features are located.

A. Information Required to Initiate a Historical Clearance

1. Project number and name.
2. Appropriate accounting data.
3. Brief description of the project scope.
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.
6. Engineering and design plans, including preliminary plans, if available.
7. In order for a clearance to be provided in a timely manner, a specific due date must be furnished.
8. 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 Historian or Region Historian, as appropriate. 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.
9. Photos of the project area and resources of concern (if available).
10. Brief descriptions of resources to be impacted, i.e., CDOT bridge structure numbers and locations, irrigation ditches, farm houses, neighborhoods, railroads, etc.

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 data.
3. Brief description of the project scope.
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.

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 Effects (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).

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.

Contact with the Advisory Council on Historic Preservation 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 CDOT staff in order to confirm that all pertinent information has been collected for the survey. In most cases, the consultant is responsible for assessing effects to and providing preliminary effects determinations for 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, appropriate Region Historian, and/or Senior Staff Archaeologist. As noted below, however, effects determinations should not appear in survey reports.

Consultants must submit all documents generated by the survey to the Senior Staff Historian, Regions 4 or 6 Historians, 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 HQ or Region 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, its client and/or a local agency send final documents or correspondence regarding specific projects directly to the SHPO. All agency coordination must be facilitated by CDOT cultural resources staff.***

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 and historic resources encountered in the APE, including recommendations of National Register eligibility for each resource. **Determinations of Effects should not be included in survey reports; results and recommendations should be limited to determinations of eligibility only.**
2. Consultants must provide a minimum of three copies of a survey report and associated site forms. Additional copies may be required depending on the number of consulting parties involved in the Section 106 process. Reports specific to historic resources should 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 reports that are limited to archaeological resources. All reports, site forms and other documentation must be printed double-sided; single-sided copies are unacceptable.
3. For archaeological and historic surveys, 7.5’ USGS topographic quadrangles (or photocopied portions thereof) with the Area of Potential Effects clearly marked, and separate quadrangle 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 selected must be provided, taking into account direct and indirect impacts.
4. 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.
5. For historic surveys, draft Determination of Eligibility and Effects letter (if required by terms of contract) on CD or via electronic mail. Samples of these letters are available from the HQ and Region Historians.

Consultant Minimum Qualifications

1. All tasks must be performed under the direct supervision of an individual meeting the criteria established by 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 SHPO on cultural resource surveys and project coordination.
4. Archaeological consultants must, at minimum, possess a current State of Colorado Archaeological Non-Collection 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. Consultants

documenting architectural resources must have a background in history or architectural history and/or experience documenting architectural resources, including residential properties, ranch and farm complexes, and potential historic districts.

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). The format of these documents should comply with the CDOT NEPA Guidance Manual (www.coloradodot.info/programs/environmental/nepa-program/nepa-manual). The historic properties data 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 or repeating information previously covered in associated survey reports or technical memoranda.
- 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 historic properties affected, 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 participate in and comment on 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 (generally at the level of NEPA Categorical Exclusion) 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.
- Per delegation of the day-to-day facilitation of tribal consultation from FHWA, 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-four 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 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. 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 for a project, 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.

For additional information about the CDOT Section 106 compliance process, refer to the CDOT NEPA Guidance Manual (Chapter 9.10): <http://www.coloradodot.info/programs/environmental/nepa-program/nepa-manual>