



THE NAVAJO NATION HISTORIC PRESERVATION DEPARTMENT Cultural Resource Compliance Section

GUIDELINES FOR THE TREATMENT OF DISCOVERY SITUATIONS

INTRODUCTION

The Bureau of Indian Affairs, Navajo Area Office (BIA) and the Navajo Nation have entered into a contract pursuant to the Indian Self-determination and Education Act (P.L. 93-638, as amended) under which the Navajo Nation Historic Preservation Department (HPD) performs selected historic preservation functions as the agent of the BIA, including Section 106 consultations.

Pursuant to 36 CFR 800.11(a), these *Guidelines* will be complied with in the event of discovery of cultural and historic properties, and human remains; or unanticipated effects on identified cultural and historic properties, and human remains during the course of an undertaking or any other activity funded or permitted by the BIA within the boundaries of the Navajo Nation.

The BIA, through HPD, is responsible for ensuring identification of both previously recorded and unrecorded cultural and historic properties, and human remains, and evaluation of the effect(s) a project will have on such properties.

These *Guidelines* require adherence to the following policies, standards, and guidelines in addition to relevant cultural and historic preservation laws and regulations:

1. Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.
2. Advisory Council on Historic Preservation's Treatment of Archeological Properties: A Handbook.
3. Navajo Nation Interim Fieldwork and Report Standards and Guidelines.
4. Navajo Nation Policy and Procedures for the Protection of Cemeteries, Gravesites and Human Remains.
5. Navajo Nation Historic Preservation Department Guidelines for the Treatment of Historic, Modern, and Contemporary Abandoned Sites.
6. Navajo Nation Policy to Protect Traditional Cultural Properties.
7. Native American Graves Protection and Repatriation Act (NAGPRA).
8. National Register Bulletin 38.

The BIA is ultimately responsible for compliance with 36 CFR 800.

DEFINITIONS

1. The term "discovery" refers to finding; locating; observing; uncovering; unearthing; learning about through conversation, discussion, or interview; or otherwise detecting human remains or any kind of cultural or historic property, as defined below.
2. A "historic property" is defined in Section 301(5) of the National Historic Preservation Act, as amended (1992), as any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register, including artifacts, records, and material remains related to such a property or resource.

Pursuant to *National Register Bulletin 38* and Section 101(d) (6) (A) of the National Historic Preservation Act, as amended (1992), "historic property" includes properties of traditional religious and cultural importance to an Indian tribe.

3. "Cultural properties" as defined by Section 10(c) of the Navajo Nation Cultural Resources Protection Act (NNCRPA, CMY-19-88) will also be identified and protected. The types of properties and landmarks eligible for listing on the Navajo Nation Register of Cultural Properties and Cultural Landmarks are defined in Section 101(a-c) of the NNCRPA.
4. The term "contemporary" refers to sites, properties, places, or burials that are 50 years of age or less.
5. The term "historical" refers to sites, properties, places, or burials that post-date 1539.
6. The term "prehistoric" refers to sites, properties, places, or burials that pre-date 1539.
7. The term "scope-of-work" refers to a plan that includes one or more of the following procedures, which may be necessary to identify, evaluate, and mitigate adverse effects on cultural and historic properties.
 - A. Archaeological work may include:
 1. Identification and evaluation of archaeological properties, including recommendations of eligibility for nomination to the National Register of Historic Places;
 2. Testing of potentially eligible historic properties for a determination of significance and eligibility for nomination to the National Register of Historic Places;
 3. Testing of historic properties to determine the nature and extent of cultural deposits;
 4. Data recovery.
 - B. Ethnographic work may include
 1. Identification and evaluation of traditional cultural properties, other cultural properties, and burial sites, including, as applicable, recommendations of eligibility for nomination to the National Register of Historic Places;
 2. Treatment of the sites and properties;
 3. Conflict resolution.

PROTOCOL

These guidelines must be followed in any situation involving the discovery of any kind of cultural or historic property, including historical and prehistoric archaeological sites and traditional cultural properties, and human remains, whether previously identified or unknown.

In the event of a discovery, the project sponsor will inform the project contractor to temporarily cease work within 50 feet of the site. A 100-foot-radius avoidance zone will be maintained around discoveries containing human remains.

HPD will be contacted within one (1) working day at (928) 871-7198 or 7134 to arrange for proper evaluation of any discovery.

When a cultural or historic property is discovered:

1. HPD will make a determination of effect and significance of the cultural or historic property (ies) by the most efficient and expeditious means and notifies the BIA of these determinations.

2. HPD will consult with interested parties, including other Indian tribes, during development of a scope-of-work and will take into account comments from interested parties into the scope-of-work.
3. In the event of a dispute concerning the disposition of human remains discovered on the Navajo Nation, the Navajo Nation Historic Preservation Officer will make all final decisions regarding resolution of disputes in accordance with Navajo Nation policies.

ADMINISTRATIVE PROCEDURES

In the event of a declaration of a discovery, the following the actions will be taken.

1. For discovery situations where a scope-of-work has been approved:
 - A. HPD will define a 50-foot-radius avoidance zone around the discovery (100-foot-radius if the discovery contains human remains) to remain in effect for the duration of investigations at the site.
 - B. HPD will make recommendations regarding significance and eligibility for nomination to the National Register of Historic Places for each discovered property.
 - C. If the property is eligible, HPD will establish a schedule to complete treatment.
 - D. HPD will implement or direct its contractor to implement the scope-of-work at each discovery consistent with the approved scope-of-work for the undertaking.
 - E. The methods of excavation, recordation, conservation, analysis, preservation, storage, interviewing or consultation with knowledgeable individuals and interested parties, and reporting of discoveries shall be consistent with the scope-of-work, the general and specific methods of treatment outlined below, and stipulations of any existing memorandum of agreement or programmatic agreement applicable to the undertaking.
 - F. HPD will simultaneously notify the BIA and all declared interested parties upon the completion of treatment.
 - G. The BIA will wait three (3) working days after work is completed at the discovery before letting the project contractor continue work in the avoidance zone. This period will enable consulting and interested parties to submit comments.
 - H. The results of the investigations at a discovery will be incorporated into the draft technical report. Confidential data resulting from the ethnographic assessment and provenience data for all cultural and historic sites will be provided in one or more detachable appendices. Confidential appendices will only be distributed to appropriate parties.
 - I. The contractor will finalize the technical report, incorporating or addressing comments received from HPD.
2. For discoveries situations where a scope-of-work has not been approved:
 - A. HPD will define a 50-foot-radius avoidance zone around the discovery (100-foot-radius if the discovery contains human remains) to remain in effect for the duration of investigations at the discovery.
 - B. HPD will make recommendations regarding significance and eligibility for nomination to the National Register of Historic Places for each discovered property.
 - C. If the property is eligible, HPD will establish a schedule to complete treatment.

- D. HPD will prepare or direct a cultural resource management contractor to provide a scope-of-work within five (5) working days of the request.
- E. The methods of excavation, recordation, conservation, analysis, preservation, storage, consultation, and reporting of discoveries shall be consistent with the scope-of-work, the general and specific methods of treatment outlined below, and stipulations of any existing memorandum of agreement or programmatic agreement applicable to the undertaking.
- F. Upon approval of the scope-of-work by HPD, HPD will direct its contractor to implement the plan.
- G. HPD will simultaneously notify the BIA and all declared interested parties upon the completion of treatment.
- H. BIA will wait three (3) working days after work is completed at the discovery before letting the project contractor continue work in the avoidance zone.
- I. The results of investigations at a discovery will be incorporated into a draft technical report. Confidential data resulting from the ethnographic assessment and provenience data for all cultural and historic sites will be provided in one or more detachable appendices. Confidential appendices will only be distributed to appropriate parties.
- J. The contractor will finalize the technical report, incorporating or addressing comments received from HPD.

GENERAL METHODS OF TREATMENT

In all discovery situations the existing ground surface in the vicinity of the discovery will be mapped to show the relationship of the discovery to the project area, topographic features, cultural features, and surface artifacts. The map will be prepared using, at a minimum, a compass and measuring tape.

ARCHAEOLOGICAL METHODS: Assessment and treatment of cultural resources may be accomplished using archaeological methods. Data recovery strategies for historic properties may include in situ preservation, scientific testing and excavation, and documentation. This information will be used to develop a scope-of-work for treatment of affected properties. The plan will be implemented after approval of HPD.

The general process for treatment of archaeological components of historic properties is as follows:

1. Assessment of situation by a qualified archaeologist.
2. Development of a strategy to determine the significance of the property if significance is not explicit from visible evidence. Initiate a testing program if necessary.
3. Development of a strategy for data recovery and implementation of the plan for data recovery.

ETHNOGRAPHIC METHODS: Assessment and treatment of cultural resources and burials may be accomplished using ethnographic methods. Methods include conducting interviews with chapter officials, local and customary land users, and other knowledgeable individuals to elicit information regarding these surface features. This information will be used to develop a scope-of-work for treatment of affected properties. The plan will be implemented after approval of HPD.

The general process for treatment of traditional cultural properties, historical sites, and burials (not found in the context of a historic property) is as follows:

1. Assessment of situation by a qualified anthropologist and/or cultural specialist.

2. Consultation with chapter officials, local and customary land users, and other knowledgeable individuals.
3. In the case of unclaimed human remains, consultation with interested parties, including officials from other Indian tribes.
4. Development of a scope-of-work, in consultation with HPD.
5. Implementation of the scope-of-work upon approval by HPD.
6. Preparation of a technical report; confidentiality of information will be ensured.

Burials not found in the context of a historic property will be treated in accordance with the Navajo Nation Policies and Procedures Concerning the Protection of Cemeteries, Gravesites and Human Remains and the Native American Graves Protection and Repatriation Act.

SPECIFIC METHODS OF TREATMENT

The following methods of treatment are offered for situations in which a research design or scope-of-work has not been approved for the undertaking. If a research design or scope-of-work has been approved for a specific undertaking, discovered historic and cultural properties, and human remains, shall be treated in a manner consistent with the research design or scope-of-work, using the following treatment methods as a guideline.

ASH STAINS, HEARTHES, AND OTHER THERMAL FEATURES: The location will be mapped and the feature will be profiled and photographed. Excavated fill will be screened through quarter-inch or smaller mesh. If it appears that the feature can be dated through association of artifacts or stratigraphy, appropriate samples may be taken, including charcoal fragments for radiocarbon dating. Should the feature appear likely to yield botanical remains, pollen and flotation samples may be collected. HPD must be consulted before any samples are analyzed.

STORAGE PITS: The location will be mapped and the feature will be profiled and photographed. The feature will be fully excavated, and the fill must be screened through quarter-inch or smaller mesh screen. If it appears that the feature can be dated through association of artifacts or stratigraphy appropriate samples may be taken. Should the feature appear likely to yield botanical remains, pollen and flotation samples may be collected. All artifacts will be collected. HPD must be consulted before any samples are analyzed.

BURIED OR PARTIALLY BURIED STRUCTURES, MIDDENS, AND OTHER FEATURES: Examples of buried or partially buried features include pit structures, pothouses, and kivas. The location will be mapped and the feature will be profiled and photographed. Treatment of buried or partially buried features is a two-stage process involving (1) nature and extent testing within the area of effect to define the boundary of the feature and detect the presence of additional features and (2) data recovery within the area of effect. Systematic trenching in conjunction with 1 by 1 m test units, or other subsurface investigative techniques, may be used within the area of effect. Consultation with HPD is required after the initial recording has been completed for review of the data recovery plan.

Excavated fill will be screened through quarter-inch or smaller mesh. If it appears that the feature can be dated through association of artifacts or stratigraphy, or by radiographic or archeomagnetic dating, appropriate samples may be taken. Should the feature appear likely to yield botanical remains, pollen and flotation samples may be collected. HPD must be consulted before any samples are analyzed.

MISCELLANEOUS PREHISTORIC FEATURES: Examples of miscellaneous features include buried cultural horizons and agricultural features. The location will be mapped and the feature will be profiled and photographed. The strategy for treatment of miscellaneous prehistoric features is the same as that for buried or partially buried features.

SURFACE FEATURES: Examples of surface features include field houses, jacal structures, ramadas, masonry structures, historical, contemporary, and modern structures, and various types of historic landscapes. The location will be mapped and the feature(s) will be photographed. Treatment of surface features may be a multistage process involving (1) intensive and extensive documentation of the property to define the boundary of the feature and detect the presence of additional features, (2) consultation with local and customary users, and other knowledgeable individuals, in order to determine the nature of the site, place, property, or feature and recommend a treatment plan, and (3) implementation of data recovery or the treatment plan within the area of effect.

The strategy discussed above for treatment of buried or partially buried features may be the appropriate way to treat some surface features and should be used as a guideline for data recovery. Alternatively, the strategy espoused below for traditional cultural properties and historical sites may be more appropriate and should be used as a guideline for treatment.

TRADITIONAL CULTURAL PROPERTIES (TCPs) AND HISTORICAL SITES: Examples of traditional or historical features include named landscape features, mineral or herb gathering areas, offering areas, hogans, trail markers, cairns, sheep corrals, ceremonial sites (e.g., Enemy Way sites), sweathouses, and tepee grounds. If a TCP or historical site is encountered, or information about a possible site is provided to the project sponsor or their agent by any knowledgeable or concerned individual, the project sponsor must ensure that work is discontinued within a 50-foot-radius of the property and contact HPD within one (1) day of the discovery. Treatment of TCPs or historical sites is a two-stage process involving (1) consultation with HPD along with local and customary users, and other knowledgeable individuals, in order to determine the nature of the site, place, property, or feature and recommend a scope-of-work and (2) implementation of the scope-of-work. Examples of treatment include, but are not limited to, the following:

1. Avoiding the remaining portion of the property through use of protective fencing or redesign of the undertaking or project.
2. Monitoring the remaining portion of the property during construction and/or erection of protective fencing to ensure protection.
3. Moving material remains of the TCP. This activity may include participation of local medicine men or women for ceremonial blessings.
4. Restricting construction activities to certain seasons or times of the day.
5. Conducting ceremonies for the well-being of properties that have been affected.

HPD will recommend the best possible treatment as guided by interviews and consultation.

HUMAN REMAINS: If human remains (whether modern, contemporary, historical, or prehistoric) are encountered at any phase of work, the project sponsor shall immediately take steps to preserve and protect the remains in situ. Work must cease within a 100-foot-radius of the remains and HPD must be contacted within one (1) working day of the discovery. Treatment of the human remains shall be dependent upon consultation with HPD. *Under no circumstances* shall the project sponsor or the project contractor further disturb human remains except under the formal direction of HPD. All human remains must be treated in accordance with the laws of the Navajo Nation. Claimed human remains shall not be disturbed without the consent of the next-of-kin. Unclaimed human remains shall be treated according to the provisions of the Navajo Nation Policies and Procedures Concerning the Protection of Cemeteries, Gravesites and Human Remains and the Native American Graves Protection and Repatriation Act.