

Review of Historic Preservation Projects

Technical Preservation Services Division, U.S.
Department of the Interior, Washington D.C.

These administrative guidelines are issued by the U.S. Department of the Interior to ensure that review of historic preservation projects are carried out in accordance with appropriate regulations (36 CFR 67).

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Subject: Protection of Archeological Resources on Tax Act Projects

Issue: Standard No. 8 states that "Every reasonable effort shall be made to protect and preserve archeological resources affected by or adjacent to any project." Although few tax act projects involve ground disturbance, this activity could occur during rehabilitation work and result in damage to archeological resources. The following guidelines help to explain those situations in which a rehabilitation project could be denied certification for failure to comply with Standard No. 8. These guidelines have been developed by the Office of the Solicitor, and the Division of Technical Preservation Services, Interagency Archeological Services, and the National Register of Historic Places.

Archeological Surveys, for the purposes of identifying archeological resources or determining their significance, should never be required as a condition for certification of rehabilitation. Denial of rehabilitation certification on the basis of the owner's failure to comply with Standard No. 8 should be made only under the following conditions:

1. The archeological resources are identified in Part 1 of the Historic Preservation Certification Application, or in the National Register nomination; AND
2. The archeological resources contribute to the historic significance of the property; AND
3. The damage sustained during the rehabilitation results in the property's loss of significance (as defined by National Register criteria).

As the three conditions above indicate, there will be few certified historic structures whose significance is primarily archeological.

Owners should be encouraged to develop rehabilitation plans which either protect or minimize damage to known archeological resources or those discovered during construction. Regional offices, however, should be aware that the archeological expertise and financial capabilities of private owners are often less than those of a State or Federal agency. There is also no

general Federal legislation requiring private owners to protect archeological resources during building construction. The Federal tax legislation providing tax incentives for rehabilitating certified historic structures makes no specific reference to the protection of archeological resources affected by the rehabilitation. The purpose of this legislation is to preserve the character of certified historic structures. For these reasons, we cannot require the same level of protection for cultural properties by a private owner under the rehabilitation certification program as by Federal agencies under Section 106 of the National Historic Preservation Act and Advisory Council regulations. The evaluation of Standard number 8, "every reasonable effort shall be made to protect or preserve archeological resources" must reflect these realities.

Note: Although the rehabilitation certification program is designed primarily for the preservation of structures, Section 6 of the Tax Treatments Extension Act of 1980 has been used to protect several archeological sites through the voluntary donation of easements for conservation purposes. Many archeological sites are also protected from construction activities by State and local government legislation. Potential damage to archeological resources threatened by a tax act project could be mitigated if the property is located in a jurisdiction which has such legislation.

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