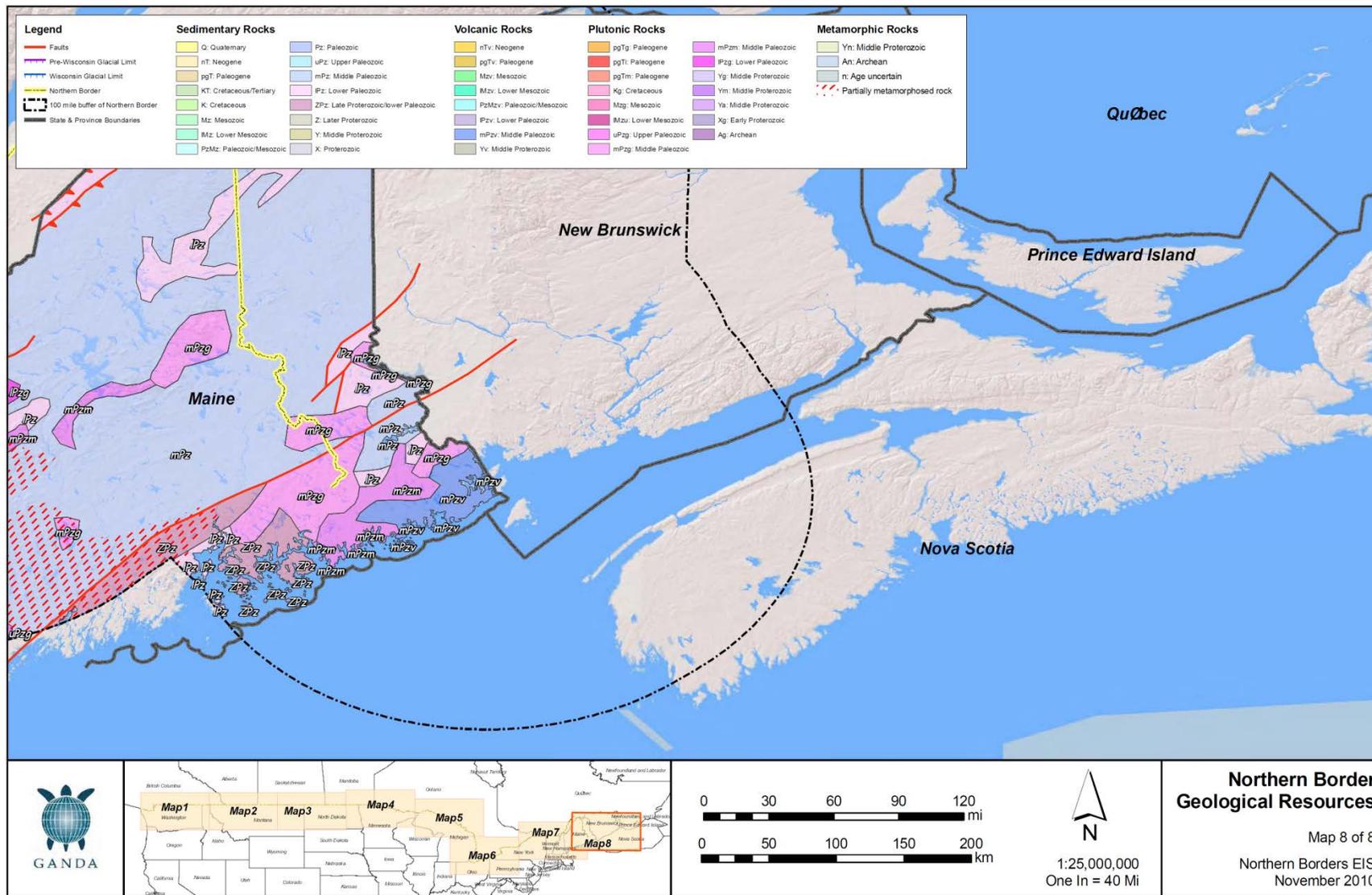


Figure H-20. Geologically Relevant Strata along the Northern Border in Eastern Maine



5 REGULATORY FRAMEWORK GOVERNING THE MANAGEMENT OF CULTURAL RESOURCES

This section lists and describes pertinent laws, regulations, Executive Orders, guidelines, agreements, and treaties for which CBP is responsible as it carries out its mission and programs in the four geographic regions within the 100-mile corridor of the Northern Border project area. The section first describes the national regulatory framework that governs CBP action across the country and then provides a state-by-state account of the regulatory framework at state and local levels.

5.1 CULTURAL RESOURCES DEFINED

Cultural resources in the broadest sense include tangible elements (e.g., buildings, structures, sites, districts, and objects of significance in American history, architecture, archaeology, and engineering) and intangible elements (e.g., folklore and religious beliefs). Cultural resources may include relatively recent or historic places and items of cultural importance. In the context of this PEIS and CBP’s stewardship responsibility, cultural resources refer to historic and prehistoric real property (e.g., buildings, structures, historic districts, ruins, archaeological sites, and traditional cultural and tribal places) and historic personal property (e.g., historic records and archaeological artifacts). The term “historic property” is used in place of “cultural resources” in the National Register of Historic Places (National Register) program, and is used in this PEIS when referring to any cultural resource identified as eligible for, or listed in, the National Register.

5.2 LEGAL SETTING FOR CULTURAL RESOURCES PROTECTION

From a legal perspective, cultural resources are defined in various Executive Orders (EOs), Federal laws, DHS Directives System Directive 017-01: Historic Preservation in Asset Management and Operations (Directive 017-01) and DHS Directives System Instruction 017-01-001: Instruction Guide on the Historic Preservation in Asset Management and Operations (Instruction 017-01-001), and state laws.

Congress established the most comprehensive national policy on historic preservation with passage of the National Historic Preservation Act (NHPA) in 1966. One goal of the act is that Federal agencies act as responsible stewards of our Nation’s resources when their actions may affect historic properties. CBP must comply with NHPA before issuing any license, permit, or approval, and before expending any funds apart from non-destructive planning activities.

Sections 106 and 110 of the NHPA establish Federal agency responsibilities for historic preservation. Section 106 requires Federal agencies account for the effects of their actions on historic properties—any district, site, building, structure, or object included or eligible for inclusion in the National Register.

Section 110 requires Federal agencies to assume responsibility for all historic properties under their control and integrate historic preservation into their mission and programs. Section 110 also sets out a series of broad preservation responsibilities for Federal agencies and requires them to establish a historic preservation program. By adhering to the requirements of Section 110, CBP will be able to fulfill its responsibilities for Section 106 more effectively and efficiently.

1 The nature of consultation in Section 106 review is dynamic, as CBP will provide information to
2 others for review and concurrence or comment. It is CBP's position to comply with all applicable
3 Federal laws and regulations.

4 **5.3 CBP REQUIREMENTS**

5 The Department of Homeland Security (DHS) developed Directive 017-01 and Instruction 017-
6 01-001, which establish policy and procedures for appropriate consideration of historic
7 properties and Native American sacred sites in the management and operation of DHS assets.
8 Directive 017-01 and Instruction 017-01-001 establish appropriate DHS roles, responsibilities,
9 and lines of accountability to apply the relevant requirements of historic preservation policy to
10 DHS activities. They have a particular focus on NHPA (16 United States Code [U.S.C.] Sec.
11 470 *et seq.*) and the implementing regulations of Section 106 of the NHPA at 36 Code of Federal
12 Regulations (CFR) 800, as well as EO 13007, Indian Sacred Sites.

13 The requirements in Directive 017-01 and Instruction 017-01-001 apply to all DHS components,
14 including CBP. Thus, any CBP-specific policies, procedures, and other guidance must be
15 consistent with Directive 017-01 and Instruction 017-01-001 and serve to supplement and further
16 clarify the requirements laid out in them, as well as in NHPA, when meeting the requirements of
17 Section 106 regulations.

18 **5.4 NHPA AND RELATED LAWS AND REGULATIONS**

19 Federal agencies must comply with several historic preservation laws and EOs. The NHPA
20 along with some of the most common Federal laws dealing with historic and archaeological
21 preservation are described below.

22
23 The NHPA promotes historic preservation by ensuring that Federal agencies consider historic
24 properties when planning and making decisions. Among the provisions of the law most relevant
25 to CBP:

- 26 • The NHPA created the National Register, an official listing of the Nation's historic
27 properties. It defines a historic property as any prehistoric or historic district, site,
28 building, structure, or object included in, or eligible for inclusion in, the National
29 Register (36 CFR 800.16(1)). Stewardship of historic properties—identifying, evaluating,
30 and protecting them—is the goal of Federal preservation legislation.
- 31 • The NHPA established State Historic Preservation Offices (SHPOs) and Tribal Historic
32 Preservation Officers (THPOs) with roles for each. CBP regularly communicates and
33 consults with SHPOs and THPOs as part of the Section 106 review process.
- 34 • The NHPA authorized the Secretary of the Interior (SOI) to establish standards for the
35 preservation and treatment of historic properties and professional qualifications for those
36 charged with such tasks. CBP must be familiar with these standards and qualifications
37 when selecting cultural resource specialists and reviewing or developing proposals for
38 preservation and treatment of historic properties.

39 The NHPA created the ACHP, an independent Federal agency that serves as the primary policy
40 advisor to the government on matters related to historic preservation. The ACHP oversees the

1 implementation of the regulations guiding Section 106 review and, at times, participates in
2 Section 106 reviews. CBP may be involved with the ACHP in different ways. Under certain
3 circumstances, the ACHP will participate in specific Section 106 reviews and practitioners will
4 need to include them in communications and consultations. CBP must supply the ACHP with
5 documentation of findings of adverse effect and every memorandum of agreement (MOA)—an
6 agreement that commits a Federal agency to carry out the agreed-upon measures to mitigate
7 adverse effects on historic properties—must be filed with the ACHP.

8 The most relevant sections of NHPA to practitioners are Section 106 and Section 110. These
9 sections specifically set out Federal agency responsibilities for historic preservation with the goal
10 of thoroughly integrating historic preservation priorities into their overall missions and programs.

11 Section 106 of the NHPA requires Federal agencies to account for the effects of their actions on
12 historic properties before issuance of any license or expenditure of Federal funds on the project.
13 The Advisory Council on Historic Preservation (ACHP) must have a reasonable opportunity to
14 comment on any Federal agency undertaking. These provisions form the foundation of Section
15 106 review, as implemented by the regulations in 36 CFR 800.

16 The Section 106 regulations establish a four-step process by which Federal agencies account for
17 the effects of their actions on historic properties. Although the regulations do not mandate
18 preservation in all cases, they integrate preservation values into planning and decision-making.

19 Section 110 of the NHPA contains several provisions that create a framework for Federal
20 stewardship of historic properties. It sets out the broad historic preservation responsibilities of
21 Federal agencies and ensures that historic preservation is fully integrated into the ongoing
22 programs of all Federal agencies. Section 110 includes specific requirements governing agency
23 compliance with Section 106. Its provisions requiring identification and evaluation of historic
24 properties, and consultation with a variety of interested parties are reflected in the regulations
25 implementing Section 106 reviews.

26 The Antiquities Act of 1906 was the first Federal law to promote preservation of archaeological
27 and historic sites on Federal and Native American lands. It requires Federal agencies to preserve
28 archaeological sites and historic structures on the lands that they manage. It also authorizes the
29 creation of national monuments on Federal land to protect both cultural and natural resources and
30 provided the foundation for later legislation, such as NHPA.

31 The Historic Sites, Buildings, and Antiquities Act (Historic Sites Act) expanded upon the
32 Antiquities Act. It established a national policy to preserve historic sites, buildings, and objects
33 of national significance for the public good, and organized most Federal preservation activities
34 under the NPS.

35 The Archaeological Recovery Act of 1974 requires all Federal agencies to provide for
36 archaeological data recovery and recordation of historic data that would otherwise be destroyed
37 due to Federal construction projects or federally licensed activity. Although the salvage
38 approach of this act has been superseded by the planning and consultation approach embodied in
39 NHPA and 36 CFR 800, it established the principle that Federal agencies are authorized to fund
40 archaeological excavations and other mitigation measures.

1 The American Indian Religious Freedom Act (AIRFA) of 1978 protects the spiritual beliefs and
2 practices of Native Americans and Native Hawaiians, as guaranteed by the First Amendment of
3 the U.S. Constitution. Although it does not specifically prohibit any physical alteration of sacred
4 sites or guarantee unlimited access to such sites, the law directs Federal agencies to consult with
5 traditional religious leaders to ensure that agency policies and procedures protect and preserve
6 traditional cultural practices, including access to sacred sites and use and possession of sacred
7 objects. Projects with the potential to affect traditional religious or sacred sites will require
8 careful consultation with the THPO or other designated tribal representatives to assure that the
9 sites are not physically harmed and that access and use of the sites are not impeded.

10 The Archaeological Resources Protection Act (ARPA) of 1979 protects archaeological resources
11 on Federal and Native American land from looting and vandalism. The part of the law most
12 relevant to the practitioner is the requirement that all archaeological excavations on Federal or
13 Native American lands are conducted in accordance with a permit from the land manager, such
14 as BLM. For projects involving archaeological field investigations/research, the practitioner
15 must determine whether an ARPA permit is needed, and if so, which land management office
16 issues the permit. If an ARPA permit is required, the practitioner must ensure that contracted
17 cultural resources specialists meet the qualifications for an ARPA permit and that project
18 schedules include the time needed to secure the permit or permits.

19 The Native American Graves Protection and Repatriation Act (NAGPRA) of 1990 and its
20 implementing regulations (43 CFR 10) ensure the rights of Native American tribes and Native
21 Hawaiian organizations to control the disposition of human remains, funerary objects, sacred
22 objects, and objects of cultural patrimony (collectively referred to as cultural items) held by
23 Federal agencies or found on Federal and tribal lands. NAGPRA requires that Native American
24 tribes or Native Hawaiian organizations be consulted when archaeological investigations on
25 Federal or tribal lands encounter or expect to encounter human remains or cultural items or if
26 such items are unexpectedly discovered on Federal or tribal lands. If human remains are
27 encountered, all work in the area must stop and the appropriate tribe(s) notified and brought in to
28 consult on the disposition of the remains and associated funerary objects. Any excavation or
29 removal of cultural items must be conducted under procedures required by ARPA.

30 The stipulations of NAGPRA strongly encourage that human remains and cultural items are not
31 excavated or removed, but are preserved in place. To comply with NAGPRA in the course of
32 Section 106 review, practitioners must carefully consult with the appropriate THPO or
33 designated tribal representative, as well as with the SHPO and cultural resources specialists.
34 Practitioners must also review any existing information regarding cultural resources for the
35 project area to determine the likelihood of human remains or other cultural items. This
36 assessment should be made as early as possible in the planning process. The Bureau of Indian
37 Affairs (BIA) and the Department of the Interior (DOI) maintain a list of federally recognized
38 Native American tribes.

39 **5.5 EXECUTIVE ORDERS**

40 **EO 11593 Protection and Enhancement of the Cultural Environment.** This 1971 EO directs
41 Federal agencies to support preservation of cultural resources, identify and nominate historic
42 properties under their jurisdiction to the National Register, and avoid inadvertent transfer, sale,

1 demolition, or substantial alteration of eligible properties. This EO reiterates and emphasizes
2 some of the provisions of NHPA and 36 CFR 800.

3 **EO 13006 Locating Federal Facilities on Historic Properties in our Nation’s Central Cities.**
4 This 1996 EO directs Federal agencies to use and maintain facilities in historic properties in
5 urban business areas. In planning locations for facilities, agencies must give preference to
6 historic properties within historic districts, make any alterations compatible with the surrounding
7 district, and reduce regulatory barriers that may impede achieving this objective.

8 **EO 13007 Indian Sacred Sites.** This 1996 EO directs Federal agencies, to the extent
9 practicable, to accommodate Native American ceremonial use of sacred sites under agency
10 jurisdiction and avoid adverse effects to those sites. This EO emphasizes the importance of
11 protecting both the physical integrity and the ongoing religious use of Native American sacred
12 sites.

13 **EO 13175 Consultation and Coordination with Indian Tribal Governments.** This 2000 EO
14 directs Federal agencies to strengthen the U.S. Government’s government-to-government
15 relationships with Native American tribes. Agencies must respect Native American tribal self-
16 government and sovereignty and develop accountable processes of consultation to ensure
17 meaningful and timely input from tribes. CBP uses the DHS Plan to Develop a Tribal
18 Consultation and Coordination Policy Implementing Executive Order 13175 as a consultation
19 policy and guidance for meaningful consultation with Native American tribes. The document,
20 developed in consultation with tribal governments, contains a plan of action for meeting goals
21 specified in EO 13175. This plan includes developing a tribal consultation policy and dedicating
22 staff resources to work with tribal governments, including designation of a principal tribal liaison
23 within the Office of Intergovernmental Affairs and regional or local tribal liaisons within
24 individual components including CBP.

25 **5.6 LEGAL SETTING FOR PALEONTOLOGICAL PROTECTION**

26 The Paleontological Resources Protection Act refers to Title VI, Subtitle D – “Paleontological
27 Resources Preservation” of the Omnibus Public Land Management Act (OPLMA) of 2009,
28 Public Law 111-011. Subtitle D (OPLMA-PRP), requires the Secretaries of the Interior and
29 Agriculture to, “manage and protect paleontological resources on Federal land using scientific
30 principles and expertise. The Secretary shall develop appropriate plans for inventory,
31 monitoring, and the scientific and educational use of paleontological resources, in accordance
32 with applicable agency laws, regulations, and policies. These plans shall emphasize interagency
33 coordination and collaborative efforts where possible with non-Federal partners, the scientific
34 community, and the general public” (16 USC 470aaa, Sec. 6302).

35 The OPLMA-PRP only applies to Federal lands and does not affect private lands. The act
36 includes criminal and civil penalties for fossil theft and vandalism. However, it also includes
37 provisions for casual collecting which means, “the collecting of a reasonable amount of common
38 invertebrate and plant paleontological resources for non-commercial personal use, either by
39 surface collection or the use of non-powered hand tools resulting in only negligible disturbance
40 to the Earth’s surface and other resources” (16 USC 470aaa, Sec. 6301[1]). Casual collecting is
41 not allowed within national parks or other lands managed by the National Park Service (NPS).

1 Any paleontological excavation beyond casual collecting requires a special permit as proscribed
2 by the OPLMA-PRP.

3 **5.7 STATE LAWS, REGULATIONS, GUIDELINES, AGREEMENTS,** 4 **AND TREATIES**

5 This section outlines state-level regulations and guidelines that may impact procedures relevant
6 to CBPs cultural resources management compliance process. While there is relative uniformity
7 regarding Section 106 compliance procedures and National Register determinations, other issues,
8 such as access to information or survey permitting, have much greater variation.

9 **5.7.1 NEW ENGLAND REGION**

10 **5.7.1.1 Maine**

11 **State Historic CR Laws, Statutes, and Regulations**

12 Numerous Federal and state laws, and the regulations and agreements emanating from them,
13 govern the treatment of historic and archaeological resources in Maine. Such laws are generally
14 restricted to the protection of cultural resources that may be threatened by Federal, state-funded,
15 or state-permitted projects. Section 106 of the National Historic Preservation Act offers the
16 broadest protection of cultural resources in the United States.

- 17 • Chapter 27 of the Maine Revised Statutes Annotated, sections 371-378 (27MRSA § 371-
18 378). This statute is unofficially called “Maine’s Antiquities Law”:
19 <http://janus.state.me.us/legis/statutes/27/title27ch13sec0.html>.
- 20 • Regulation concerning Maine cemeteries and burials:
21 <http://janus.state.me.us/legis/statutes/13/title13sec1371-a.html>.
- 22 • Federal historic preservation laws applicable to Federal projects in Maine:
23 www.cr.nps.gov/history/online_books/fhpl/contents.htm.
- 24 • Regulations for archaeological work in Maine: www.maine.gov/sos/cec/rules/rules.html.

25 Maine's Site Location of Development Law (Title 38, Chapter 3, §§ 481-490;
26 www.maine.gov/dep/blwq/docstand/sitelawpage.htm#stat).

27 **State Historic Preservation Office**

28 The SHPO for Maine is the Maine Historic Preservation Commission (MHPC). The MHPC:

- 29 • Nominates properties to the National Register of Historic Places;
- 30 • Reviews and comments on the effect of Federal undertakings on historic properties;
- 31 • Assists owners of income-producing properties to obtain Federal and state rehabilitation
32 tax credits;
- 33 • Oversees the identification and evaluation of archaeological sites as well as historic
34 buildings, objects and districts; and
- 35 • Promotes historic preservation through planning and public education.

1 The MHPC website is www.state.me.us/mhpc/index.shtml.

2 Inventory and evaluation (National Register) procedures:

- 3 • The MHPC project review procedures are at:
4 www.state.me.us/mhpc/project_review/index.html.
- 5 • For information concerning archaeological survey guidelines, refer to
6 www.state.me.us/mhpc/project_review/archaeological_survey_guidelines.html.
- 7 • For information concerning architectural survey guidelines and survey forms for project
8 review, refer to www.maine.gov/mhpc/architectural_survey/index.html.

9 State preservation plan:

10 Maine's state preservation plan is entitled: *A Heritage for the Future: A Plan for Preserving*
11 *Maine's Historic and Archaeological Resources*, found at
12 www.state.me.us/mhpc/preservation_planning/state_plan/index.html.

13 Resources for identifying locations of cultural resources (GIS, web, database, etc.):

- 14 • The cultural architectural resource management archive (CARMA) is an online
15 architectural survey database for Maine's historic above-ground resources that enables
16 architectural historians and survey consultants to submit completed survey projects for
17 Federal or state regulatory project reviews online for preliminary review. All surveys
18 submitted to MHPC in fulfillment of Federal or state regulatory project review
19 requirements must be entered into CARMA. Consultants and firms submitting survey
20 projects must either attend a training session in Augusta, Maine or request a training
21 packet.
- 22 • For state rules guiding the conduct of archaeological investigations, refer to
23 www.state.me.us/mhpc/archaeology/professional/rules.html.
- 24 • For the MPREHIST database (a list of archaeological reports on file at MHPC and
25 accessible by approved archaeologists), go to
26 www.state.me.us/mhpc/archaeology/professional/mprehist.html.
- 27 • For information on Historical Contexts and National Register eligibility standards, refer
28 to www.state.me.us/mhpc/archaeology/professional/contexts.html.

29 Guidance to Federal agencies for 106 and other compliance:

30 For MHPC project review procedures, refer to
31 www.state.me.us/mhpc/project_review/index.html.

32 Special forms for SHPO 106 notification or identified cultural resources:

33 For above-ground culture resources survey forms, refer to
34 www.state.me.us/mhpc/architectural_survey/survey_forms.html.

1 Requirements for research reports:

- 2 • For archaeological survey guidelines, refer to
3 www.state.me.us/mhpc/project_review/archaeological_survey_guidelines.html.
- 4 • For architectural survey guidelines, refer to
5 www.state.me.us/mhpc/architectural_survey/survey_guidelines.html.

6 Qualifications for cultural resources specialists:

7 For the approved list of consultants qualified to conduct archaeological and architectural surveys
8 in Maine, refer to www.maine.gov/mhpc/project_review/arc_consultants.html.

9 Permit or other requirements for archaeological investigations:

10 None required.

11 **Tribal statutes and treaties**

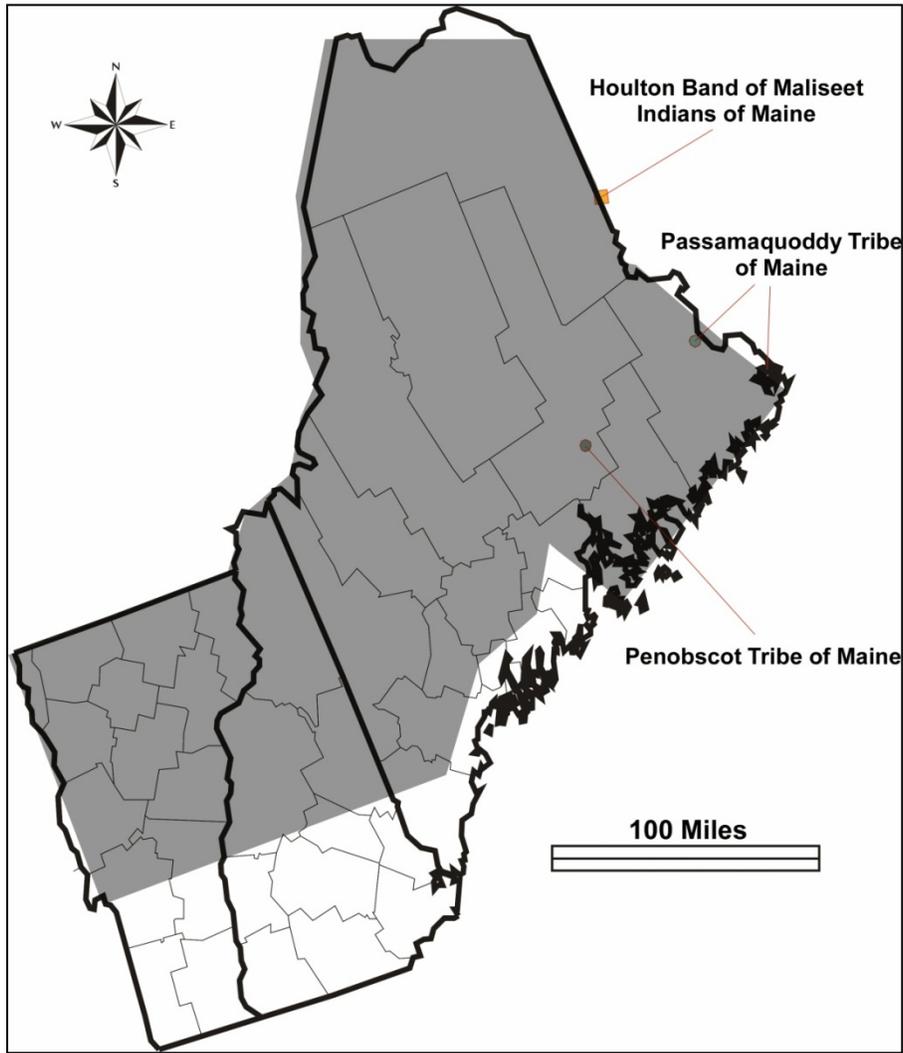
12 *Special Agreements between the Maine SHPO and Maine Tribes*

13 The MHPC currently has two agreements with Maine tribes. An agreement between the MHPC
14 and the Penobscot Nation outlines that the Penobscot THPO will deal with cultural resource
15 matters, including both archaeology and standing structures on Penobscot reservation and trust
16 lands. Cultural resource issues on Penobscot fee land are commented on by both the MHPC and
17 the THPO. A similar agreement exists between the MHPC and the Passamaquoddy Tribe with
18 the Passamaquoddy THPO dealing with archaeological issues on reservation and trust lands and
19 the MHPC handling standing structures on Passamaquoddy reservation and trust lands. Cultural
20 resource matters on Passamaquoddy fee lands falls under the jurisdiction of both the MHPC and
21 the THPO.

22 **Federal lands and agencies**

23 Maine has three federally recognized Native American tribes (Figure H-21). In 1980, with the
24 aid of the United States, the Penobscot and the Passamaquoddy reached a compromise with the
25 State of Maine resulting in the Maine Indian Land Claims Act signed by President Carter. A
26 third tribe—the Houlton Band of Maliseet Indians—had not filed suit but was represented by
27 counsel and was later included in the compromise. In 1991, the Aroostook Band of Micmacs
28 Settlement Act settled all claims of the Aroostook Band of Micmacs resulting from the band's
29 omission from the Maine Indian Claims Settlement Act of 1980.

1 **Figure H-21. Native-American Lands within the 100-mile PEIS Corridor of Maine, New**
2 **Hampshire, and Vermont**



3
4 **5.7.1.2 New Hampshire**

5 **State Historic CR Laws, Statutes, and Regulations**

6 Numerous Federal and state laws—along with the regulations and agreements emanating from
7 them—govern the treatment of historic and archaeological resources in New Hampshire. Such
8 laws are generally restricted to protection of cultural resources that may be threatened by
9 Federal, state-funded, or state-permitted projects. Section 106 of the NHPA offers the broadest
10 protection of cultural resources in the United States.

- 11 • New Hampshire Revised Statutes Annotated (RSA) 227-C:9, Directive for cooperation in
12 the protection of historic resources as implemented by state administrative rules. Refer to
13 [http://maisonbisson.com/nhrsa/rsa/227-c-9-directive-for-cooperation-in-the-protection-](http://maisonbisson.com/nhrsa/rsa/227-c-9-directive-for-cooperation-in-the-protection-of-historic-resources/)
14 [of-historic-resources/](http://maisonbisson.com/nhrsa/rsa/227-c-9-directive-for-cooperation-in-the-protection-of-historic-resources/).

- 1 • Cultural resource laws for New Hampshire (up to 2001) are also listed on the Indian
2 burial and sacred grounds watch website,
3 www.ibsgwatch.imagedjinn.com/learn/newhampshirelaw.htm.
- 4 • Several recent legal decisions recognize New Hampshire's Native Americans in ways
5 that may affect Northern Border project consultation. The New Hampshire Recognition
6 Bill HB1610 passed and was signed by Governor Lynch on July 10, 2010. This act
7 established a New Hampshire commission on Native American affairs and recognized the
8 Abenaki and other American Indian residents as a minority population in the state.

9 **State Historic Preservation Office**

10 The SHPO for New Hampshire is the New Hampshire Division of Historical Resources
11 (NHDHR). The NHDHR preserves and enhances the state's historic and cultural heritage by:

- 12 • Assisting organizations and individuals in their efforts to preserve the state's heritage;
- 13 • Surveying and inventorying the state's archaeological and historical resources;
- 14 • Bringing Federal preservation programs, such as Preservation Tax Incentives and the
15 National Register, to New Hampshire's residents;
- 16 • Offering several grant programs focused on historic preservation;
- 17 • Working with local governments and Federal and state agencies to preserve historical
18 resources in their care;
 - 19 ○ Reviewing all Federal undertakings in the state to identify and protect historical
20 resources; and
 - 21 ○ Providing services of the state archaeologist and state architectural historian.

22 The NHDHR website is www.nh.gov/nhdhr/.

23 Inventory and evaluation (National Register) procedures:

24 For NHDHR inventory and review procedures, refer to
25 www.nh.gov/nhdhr/review/106intro.html.

26 ***State preservation plan:***

27 New Hampshire's 5-year preservation plan is entitled *Points of Interest and Touring Map* at:
28 www.nh.gov/nhdhr/programs/documents/nh_preservation_plan2011to2015.pdf.

29 Resources for identifying locations of cultural resources (GIS, web, database, etc.):

30 GRANIT data mapper website.

31 Guidance to Federal agencies for 106 and other compliance:

- 32 • To initiate Section 106 review in New Hampshire, a completed request for project review
33 form (RPR) must be submitted to NHDHR. The RPR must be submitted by mail (project
34 submissions will not be accepted via fax or e-mail). The NHDHR submits its comments

1 to project proponents in writing, not by telephone or e-mail. For more information, refer
2 to www.nh.gov/nhdhr/review/documents/rpr_manual.pdf.

- 3 • For the RPR and instructions for completion, refer to www.nh.gov/nhdhr/review.
 - 4 • For state rules on archaeological standards and guidelines, refer to
5 www.nh.gov/nhdhr/review/documents/arch_standard_guidelines.doc.
 - 6 • Archaeological consultants can refer to the NHDHR archaeology report requirements
7 chart (www.nh.gov/nhdhr/review/documents/arch_report_chart.doc) for clarification on
8 report submission requirements. NHDHR survey requirements are at
9 www.nh.gov/nhdhr/review/documents/arch_standard_guidelines.doc.
 - 10 • For a list of NHDHR-qualified archaeological consultants, refer to
11 www.nh.gov/nhdhr/consultants_archaeology.html.
 - 12 • For guidelines regarding the curation of artifacts, refer to
13 www.nh.gov/nhdhr/review/documents/curation_guidelines.doc.
 - 14 • For state rules on completion of architectural history surveys and the list of qualified
15 consultants, refer to www.nh.gov/nhdhr/review/architectural_history.htm.
- 16 Special forms for SHPO 106 notification or identified cultural resources:
- 17 • To initiate Section 106 review in New Hampshire, a completed request for a project
18 review form (RPR) must be submitted to NHDHR. The RPR must be submitted by mail
19 (project submissions will not be accepted via fax or e-mail). NHDHR submits its
20 comments to project proponents in writing, not by telephone or e-mail. For more
21 information, refer to www.nh.gov/nhdhr/review/documents/rpr_manual.pdf.

22 For the RPR and instructions for completion, refer to www.nh.gov/nhdhr/review.

23 Requirements for research reports:

- 24 • To streamline the project review process, the NHDHR has altered the Phase IA
25 archaeology survey report requirements. If a Phase IA survey does not identify any
26 archaeological sites or areas of archaeological sensitivity within the project area, a Phase
27 IA "Short Report" can substitute for a full Phase IA report. The short report form has
28 been grouped with the bibliography form to eliminate redundancy between the two
29 submissions. For the combined bibliography form and short report, refer to
30 www.nh.gov/nhdhr/review/documents/rpr_manual.pdf.
- 31 • Consultants can refer to the NHDHR archaeology report requirements chart for
32 clarification on report submission requirements at
33 www.nh.gov/nhdhr/review/documents/arch_report_chart.doc. Refer to the NHDHR's
34 archaeological standards and guidelines for detailed report writing requirements at
35 www.nh.gov/nhdhr/review/Archaeology.htm.

36 Qualifications for cultural resources specialists:

37 A consultant must request to be listed by the NHDHR and must provide documentation
38 showing that recommended minimum standards (36CFR61) have been met.

39 Permit or other requirements for archaeological investigations:

1 It does not appear that a permit is required for archaeological investigations. For NHDHR
2 survey requirements, refer to [www.nh.gov/nhdhr/review/documents/arch_standard](http://www.nh.gov/nhdhr/review/documents/arch_standard_guidelines.doc)
3 [guidelines.doc](http://www.nh.gov/nhdhr/review/documents/arch_standard_guidelines.doc).

4 **Tribal statutes and treaties**

5 Native American Organizations With Geographical/Cultural Interests in New Hampshire at
6 www.nh.gov/nhdhr/review/tribal_list.htm

7 **Federal lands and agencies**

8 New Hampshire contains Federal lands and reserves, but no Native American reservations. The
9 NPS administers the partnership as well as the Saint-Gaudens National Historic Site in Cornish,
10 New Hampshire, and the Appalachian National Scenic Trail through Vermont and New
11 Hampshire.

12 Undertakings might also require consultation with certified local governments (CLGs) in New
13 Hampshire. Information about CLGs in the state is available from their respective state historic
14 preservation offices.

15 **5.7.1.3 Vermont**

16 **State Historic CR Laws, Statutes, and Regulations**

17 Numerous Federal and state laws—and the regulations and agreements emanating from them—
18 govern the treatment of historic and archaeological resources in Vermont. Such laws are
19 generally restricted to protecting cultural resources that may be threatened by Federal, state-
20 funded, or state-permitted projects. Section 106 of the National Historic Preservation Act offers
21 the broadest protection of cultural resources in the United States.

- 22 • Act 250 (Title 10 of Vermont Statutes Annotated (VSA), Chapter 151);
- 23 • The Vermont Historic Preservation Act (22 VSA, Chapter 14);
- 24 • 30 VSA, Chapter 5, Section 248 (Public Service Board's Certificate of Public Good); and
- 25 • State laws that protect burial sites (13 VSA, Chapter 81, Sections 3761, 3764, and 3765;
26 and 18 VSA, Chapter 107, Sections 5201 and 5212)

27 Act 250 controls development proposed on a relatively large scale or in sensitive areas. The Act
28 250 process protects Vermont's environment and gives neighbors, municipalities, local and
29 regional planning commissions, and other interested parties the opportunity to participate and
30 express concerns. Development and land subdivision proposals that fall under the act's
31 jurisdiction must apply for a land use permit. This permit can be granted, denied, or granted with
32 conditions by one of Vermont's nine district environmental commissions made up of laypersons
33 appointed by the governor. District commission decisions can be appealed to the Natural
34 Resources Board.

35 A document on Vermont burial laws is at www.sec.state.vt.us/municipal/Digging_Deep.pdf.
36 This document covers recent legislation concerning unmarked and ancient burials.

1 **State Historic Preservation Office**

2 The SHPO for Vermont is the Vermont Division for Historic Preservation (VDHP). It serves as
3 advocate for historic and prehistoric properties in the state (www.historicvermont.org/).

4 Inventory and evaluation (national register) procedures:

5 For VDHP's role in project review, refer to
6 www.dhca.state.vt.us/DHP/programs/regulatory.html

7 State preservation plan:

8 Vermont's preservation plan is entitled *Using Vermont's Past to Build a Better Future:*
9 *Vermont's State Plan for Heritage Stewardship, 2011-2015*. It can be found at
10 www.historicvermont.org/VDHP_plan_FINAL%20March%201%20for%20web.pdf

11 Resources for identifying locations of cultural resources (GIS, web, database etc.):

12 For Vermont's environmental predictive model of archaeological site locations, refer to
13 www.historicvermont.org/programs/model.pdf.

14 Guidance to Federal agencies for 106 and other compliance:

15 For state guidelines governing the conduct of archaeological investigation, refer to
16 http://efotg.sc.egov.usda.gov//references/public/VT/guidelines_for_conducting_arch.pdf.

17 Special forms for SHPO 106 notification or identified cultural resources:

- 18 • Completed forms are required for archaeological sites identified during an investigation.
19 Go to www.historicvermont.org/programs/APP%20I-%20VAI%20FORM.pdf.
- 20 • For the required form submitted summarizing the cultural resources report, refer to
21 [www.historicvermont.org/programs/APP%20K%20report%20database%20instructions.](http://www.historicvermont.org/programs/APP%20K%20report%20database%20instructions.pdf)
22 [pdf](http://www.historicvermont.org/programs/APP%20K%20report%20database%20instructions.pdf).

23 Requirements for research reports:

24 For guidelines detailing the elements required for cultural resources reports, refer to
25 www.historicvermont.org/programs/APP%20H-Phase%20I%20guidance.pdf.

26 Qualifications for cultural resources specialists:

27 For the state qualifications for cultural resources specialists, refer to
28 www.historicvermont.org/programs/APP%20B%20consultants%20process.pdf.

29 Permit or other requirements for archaeological investigations:

- 30 • For the requirements and application to receive a digging permit under the Vermont
31 Historic Preservation Act (22 VSA, Chapter 14), refer to
32 www.historicvermont.org/programs/APP%20F-%20permit%20app-info.pdf.
- 33 • In addition, an Act 250 permit is required for certain kinds of development, for example,
34 construction for commercial or industrial purposes on more than 10 acres (except for

1 farming or forestry). Some other situations require an Act 250 permit. An Act 250
2 district coordinator should be contacted to determine whether a permit is required. For
3 information on Act 250, refer to www.nrb.state.vt.us/lup/index.htm.

4 **Tribal statutes and treaties**

5 Several recent legal decisions recognize Vermont's Native Americans in ways that may affect
6 Northern Border project consultation. On May 3, 2006, Vermont's Governor Douglas signed
7 S.117, a statute recognizing the Abenaki people and all other Native Americans living in the
8 state as a minority population. The Abenaki Missisquoi band was denied Federal recognition in
9 2007. On May 14, 2010, Governor Douglas signed S. 222, an act relating to state recognition of
10 Native American tribes in Vermont. This legislation reinterpreted S.117 in a way that may
11 garner Federal approval for granting recognition to Vermont's Native American tribes and
12 bands. The bill conferred official state recognition on four bands of the Abenaki Tribe and it
13 allowed other bands to petition for state recognition in the future. The bill recognized the
14 Abenaki Nation of Missisquoi St. Francis Sokoki Band comprising the Missisquoi, St. Francis,
15 and Sokoki Bands (www.abenakination.org/); the Koasek Traditional Band of the Koas Abenaki
16 Nation based in Newbury, Vermont (www.koasekabenaki.org/); the Nulhegan Band of the
17 Abenaki Nation, also known as the Northern Coosuk/Old Philip's Band in northeastern Vermont;
18 and the ELNU Abenaki Tribe of the Koasek (www.elnuabenakitribe.org/index.html).

19 **Federal lands and agencies**

20 Vermont contains Federal lands and reserves, but no Native American reservations. The
21 Champlain Valley National Heritage Partnership area also exists within the Northern Border
22 project area, but contains no Federal land. The NPS administers the partnership as well as the
23 Marsh-Billings-Rockefeller National Historic Park in Woodstock, Vermont, and the Appalachian
24 National Scenic Trail through Vermont and New Hampshire.

25 **5.7.2 GREAT LAKES REGION**

26 **5.7.2.1 New York**

27 **State Historic CR Laws, Statutes, and Regulations**

28 In addition to the Federal regulatory framework governing the management of cultural resources,
29 the state laws (and the regulations and agreements emanating from them) govern the treatment of
30 historic and archaeological resources in New York. Such laws are generally restricted to
31 protecting cultural resources that may be threatened by Federal, state-funded, or state-permitted
32 projects. New York's cultural resources regulatory framework that may be relevant to CBP's
33 mission and program are as follows:

- 34 • The New York State Historic Preservation Act of 1980, Section 14.09:

35 <http://nysparks.state.ny.us/shpo/environmental-review/preservation-legislation.aspx>

36 The New York State Historic Preservation Act of 1980 was established as a counterpart
37 to the National Historic Preservation Act and declares historic preservation to be the
38 public policy and in the public interest of the state. The act created the New York State
39 Register of Historic Places—the official list of sites, buildings, structures, areas, or

1 objects significant in the history, architecture, archeology, or culture of the state, its
2 communities, or the Nation.

- 3 • State Environmental Quality Review Act (SEQRA) (6NYCRR Part 617):

4 <http://nysparks.state.ny.us/shpo/environmental-review/preservation-legislation.aspx>

5 The State Environmental Quality Review Act (SEQRA), 6NYCRR Part 617 of the New
6 York State Environmental Conservation Law establishes a set of uniform regulations by
7 which all state, county, and local governmental agencies incorporate environmental
8 impact considerations into their planning, review, and decision-making processes.
9 Impacts to historic resources, such as buildings listed on State or National Registers of
10 Historic Places and archaeological sites, should be taken into account. To accomplish the
11 goal of the act, SEQRA requires that all governmental agencies determine whether the
12 action they directly undertake, fund, or approve may have a significant impact on the
13 environment. If an action poses potential significant adverse impacts, agencies must
14 prepare or request an environmental impact statement. The SEQRA applies to projects
15 undertaken or permitted by county and local governments; consequently, many thousands
16 of projects statewide that fall outside the purview of the state and national historic
17 preservation acts are reviewed. New implementing regulations for SEQRA went into
18 effect in 1996. Under this act, municipalities may request that a project be reviewed by
19 the SHPO. All SHPO comments under this review are advisory only.

20 Federal historic preservation laws applicable to Federal projects in New York:
21 www.cr.nps.gov/history/online_books/fhpl/contents.htm

22 Regulations for cultural resources work in New York:

23 Requirements/standards for cultural resources investigations in New York State are described in
24 four documents:

- 25 • The New York Archaeological Council's (NYAC) Cultural Resource Standards
26 Handbook: Guidance for Understanding and Applying the New York State Standards for
27 Cultural Resource Investigations, 2000, available online at
28 www.nyarchaeology.org/mainpages/about/standards.htm;
- 29 • NYAC's Standards for Cultural Resource Investigations and Curation of Archaeological
30 Collections in New York State, 1994, available online at
31 www.nyarchaeology.org/mainpages/about/standards.htm;
- 32 • New York State Historic Preservation Office (SHPO) Phase I Archaeological Report
33 Format Requirements, 2005, available online at www.nysparks.com/shpo/; and
- 34 • *Recommended Standards for Historic Resources Surveys*, 2010, available online at
35 www.nysparks.com/shpo/survey-evaluation/

36 **State Historic Preservation Office**

37 The New York SHPO (NYSHPO) works to raise awareness of historic preservation issues,
38 encourage community revitalization and heritage tourism, and instill in state citizens a sense of
39 pride concerning its unique history. Towards these ends, it:

- 1 • Maintains the New York State Register of Historic Places;
- 2 • Consults with Federal and state agencies concerning the impacts of undertakings on
- 3 historic properties; and
- 4 • Promotes historic preservation through planning and public education.

5 The NYSHPO website is <http://nysparks.state.ny.us/shpo/>.

6 Inventory and evaluation (National Register) procedures:

7 Procedures for identification, inventory, and evaluation of National Register-eligible
8 properties in New York State follow those outlined in the ACHP guidelines for the protection
9 of Cultural and Historic Properties (36 CFR Part 800) and Part 427 of Section 14.09 of the
10 New York State Historic Preservation Act. In New York State, the State Board for Historic
11 Preservation reviews nominations to the State Register of Historic Places. All historic places
12 listed on or nominated by the commissioner of Parks, Recreation, and Historic Preservation
13 for inclusion on the National Register are also listed on the State Register. Additional
14 information concerning inventory and evaluation procedures is available online at
15 <http://nysparks.state.ny.us/shpo/>.

16 State preservation plan:

17 The New York State Office of Parks, Recreation, and Historic Preservation (NYS OPRHP
18 [NYSHPO]) prepared *Historic Preservation at a Crossroads: The 2009–2013 New York*
19 *State Historic Preservation Plan* to assist all New Yorkers interested in identifying,
20 protecting, enhancing, and promoting the state's historic and cultural resources. The
21 preservation plan is available online at the NYSHPO website,
22 <http://nysparks.state.ny.us/shpo/preservation-plan/>.

23 Resources for identifying locations of cultural resources (GIS, web, database etc.):

24 GIS database files that include most National Register-listed properties in New York State
25 are available online from the New York State GIS Clearinghouse at
26 www.nysgis.state.ny.us/gisdata/inventories/member.cfm?OrganizationID=588. The file is
27 also available through an online interactive tool at www.oprhp.state.ny.us/nr/main.asp.
28 However, the database includes neither archaeological sites nor properties that are National
29 Register-eligible, but not yet been listed. A visit to the NYSHPO is typically necessary for
30 identifying all known cultural resources.

31 Guidance to Federal agencies for 106 and other compliance:

32 General 106 guidance is available online at [www.nysparks.com/shpo/environmental-](http://www.nysparks.com/shpo/environmental-review/preservation-legislation.aspx)
33 [review/preservation-legislation.aspx](http://www.nysparks.com/shpo/environmental-review/preservation-legislation.aspx) and www.nysparks.com/shpo/national-register/.

34 Special forms for SHPO 106 notification or identified cultural resources:

35 NYSHPO employs a series of inventory forms for maintaining and updating its catalog of
36 known cultural resources. The inventory form for historical buildings and structures is online
37 at www.nysparks.com/shpo/surveyevaluation/documents/HistoricResource

1 InventoryForm.pdf. Templates for inventory forms for prehistoric and historical
2 archaeological sites may also be obtained by contacting the SHPO.

3 Qualifications for cultural resources specialists:

4 Principal investigators for cultural resources investigations conducted in New York State are
5 required to meet the minimal qualifications described in 36 CFR Part 61.

6 Permit or other requirements for archaeological investigations:

7 The NYSHPO does not require a permit for archaeological investigations.

8 **Tribal statutes and treaties**

9 From 1777 to 1871, relations between the United States and Native American tribes were
10 conducted through treaties. The Six Nations rights to lands in Central and Western New York
11 were established through a series of treaties, such as the 1794 Treaty of Canandaigua, the 1797
12 Treaty of Big Tree, and the 1842 Buffalo Creek Treaty. The 1796 Treaty of New York City
13 established the St. Regis Mohawk Reservation in the extreme northern part of the state.
14 Following rejection of the 1934 Indian Reorganization Act by the reservation's inhabitants, it
15 was reestablished in the 1960s and 1970s (e.g. [http://srmt-nsn.gov/government/culture
16 and history/](http://srmt-nsn.gov/government/culture_and_history/); <http://gallica.bnf.fr/ark:/12148/bpt6k276283.image>).

17 Two tribes in New York State have THPOs: the St. Regis Mohawk Tribe and the Seneca Nation
18 of Indians (www.nathpo.org/THPO/state_list.htm#NewYork). No special agreements exist
19 between the THPO and the NYSHPO.

20 **Federal lands and agencies**

21 Three Federal agencies possess land in the project area in the New York State: the Department of
22 Defense (DOD), including Army Corps of Engineers lakes, (Fort Drum, Mount Morris Lake, the
23 Seneca Army Depot [closed], Plattsburgh Air Force Base [closed], Air Force Plant No. 38, the
24 Camden Test Annex, Griffiss Air Force Base [closed], Hancock Field [owned by the Air Force],
25 and a U.S. Marine Corps Reserve Training Center); the U.S. Fish and Wildlife Service
26 (USFWS)(the Iroquois and Montezuma National Wildlife Reserves); and the U.S. Forest Service
27 (USFS) (Finger Lakes National Forest) (www.nationalatlas.gov).

28 **5.7.2.2 Pennsylvania**

29 **State Historic CR Laws, Statutes, and Regulations**

30 In addition to the Federal regulatory framework governing the management of cultural resources,
31 state laws (and the regulations and agreements emanating from them) govern the treatment of
32 historic and archaeological resources in Pennsylvania. Such laws are generally restricted to
33 protecting cultural resources that may be threatened by Federal, state-funded, or state-permitted
34 projects. Pennsylvania's cultural resources regulatory framework that may be relevant to CBP's
35 mission and programs are:

- 36 • The Constitution of the Commonwealth of Pennsylvania
37 http://sites.state.pa.us/PA_Constitution.html

1 Historic resources are addressed in Article 1, Section 27 of the Constitution of the
2 Commonwealth of Pennsylvania, which states that, “The people have a right to clean air,
3 pure water, and to the preservation of the natural, scenic, historic and esthetic values of
4 the environment. Pennsylvania's public natural resources are the common property of all
5 the people, including generations yet to come. As trustee of these resources, the
6 Commonwealth shall conserve and maintain them for the benefit of all the people.”

- 7 • The Pennsylvania History Code (Pennsylvania Consolidated Statute, Title 37, Historical
8 and Museums)

9 [www.portal.state.pa.us/portal/server.pt/community/historic_preservation/3741/laws___re](http://www.portal.state.pa.us/portal/server.pt/community/historic_preservation/3741/laws___regulations/418109)
10 [gulations/418109](http://www.portal.state.pa.us/portal/server.pt/community/historic_preservation/3741/laws___regulations/418109)

11 The Pennsylvania History Code was established as a counterpart to the National Historic
12 Preservation Act. Along with Article 1, Section 27 of the Constitution of Pennsylvania, it
13 declares historic preservation to be the public policy and in the public interest of the state.
14 The act created the Pennsylvania Register of Historic Places, the official list of sites,
15 buildings, structures, areas, or objects significant in the history, architecture, archeology,
16 or culture of the state, its communities, or the Nation.

17 **State Historic Preservation Office**

18 The SHPO for the Commonwealth of Pennsylvania is the Bureau for Historic Preservation
19 (BHP), which is part of the Pennsylvania Historical and Museum Commission (PHMC). The
20 BHP:

- 21 • Maintains Pennsylvania’s cultural resource inventory;
- 22 • Prepares the state preservation plan;
- 23 • Nominates historic properties to the National Register;
- 24 • Reviews state and Federal actions for their effects on cultural resources;
- 25 • Assists in certifying historic building rehabilitation projects that seek tax incentives;
- 26 • Conducts archaeological investigations and surveys for other cultural resources;
- 27 • Oversees designations of historic districts under municipal ordinances;
- 28 • Advises local governments concerning preservation issues;
- 29 • Provides grants for restorations of historic buildings; and
- 30 • Aids certified local governments with historic preservation programs.

31 The BHP website is [www.portal.state.pa.us/portal/server.pt/community/historic](http://www.portal.state.pa.us/portal/server.pt/community/historic_preservation/3741)
32 [preservation/3741](http://www.portal.state.pa.us/portal/server.pt/community/historic_preservation/3741).

33 Inventory and evaluation (National Register) procedures:

34 Procedures for identification, inventory and evaluation of National Register-eligible
35 properties in Pennsylvania follow those outlined in the ACHP guidelines for the protection of
36 Cultural and Historic Properties (36 CFR Part 800) and Chapter 5 of the Pennsylvania
37 History Code. Pennsylvania also has a “Request to Initiate Consultation Form,” which they

1 require prior to an agency's consultation with the BHP. Additional guidance, along with a
2 downloadable copy of the form is online at
3 www.portal.state.pa.us/portal/server.pt/community/review_process/5071 and
4 www.portal.state.pa.us/portal/server.pt/community/review_process/5071/section_106_of_nh
5 [pa/414261](http://www.portal.state.pa.us/portal/server.pt/community/review_process/5071/section_106_of_nh_pa/414261). In Pennsylvania, the Historic Preservation Board reviews and recommends
6 nominations of properties to the National Register and advises the PHMC on the inclusion of
7 properties on the PRHC.

8 State preservation plan:

9 PHMC is currently developing its third statewide preservation plan. The initial plan (2000–
10 2005) was completed in 1999. The second plan, *Pennsylvania's Historic Preservation Plan*
11 *2006–2011*, is available for download at
12 www.portal.state.pa.us/portal/server.pt/community/preservation_plan/20240.

13 Resources for identifying locations of cultural resources (GIS, web, database etc.):

14 A map-based interactive inventory of historical and archaeological sites and surveys is
15 available online through the BHP's Cultural Resources Geographic Information System
16 (CRGIS). Access to historic resource data is open to the public and archaeological site
17 information is password protected. Additional information, as well as online access to the
18 CRGIS, is at www.portal.state.pa.us/portal/server.pt/community/crgis/3802.

19 Guidance to Federal agencies for 106 and other compliance:

20 Guidance related to the Section 106 review process in the state is online at
21 www.portal.state.pa.us/portal/server.pt/community/review_process/5071.

22 Special forms for SHPO 106 notification or identified cultural resources:

23 BHP employs a series of inventory forms for maintaining and updating its catalog of known
24 cultural resources. Forms are online at
25 www.portal.state.pa.us/portal/server.pt/community/recording_resources/3683.

26 Requirements for research reports:

27 Requirements/standards for cultural resources investigations in Pennsylvania are described in
28 three documents, available online at
29 [www.portal.state.pa.us/portal/server.pt/community/project_review_under_section_106_and_](http://www.portal.state.pa.us/portal/server.pt/community/project_review_under_section_106_and_pa_history_code/3787/guidelines/415082)
30 [pa_history_code/3787/guidelines/415082](http://www.portal.state.pa.us/portal/server.pt/community/project_review_under_section_106_and_pa_history_code/3787/guidelines/415082):

31 The BHP's Guidelines for Archaeological Investigations in Pennsylvania, 2008;

32 Site Identification Criteria, Pennsylvania Archaeological Site Survey Files, 2001; and

33 PHMC's Curation Guidelines: Preparing Archaeological Collections for Submission
34 to The State Museum of Pennsylvania, 2006.

35 Qualifications for cultural resources specialists:

36 Principal investigators for cultural resources investigations in Pennsylvania are required to
37 meet the minimal qualifications described in 36 CFR Part 61.

1 Permit or other requirements for archaeological investigations:

2 The BHP does not require a permit for archaeological investigations.

3 **Tribal statutes and treaties**

4 There are no federally recognized Indian tribes in Pennsylvania. All of the commonwealth that
5 includes the project area was ceded to the United States by the Six Nations of New York (i.e., the
6 Iroquois Six Nations) by the 1784 Treaty of Fort Stanwix.

7 **Federal lands and agencies**

8 Three Federal agencies possess land in the project area in the Commonwealth of Pennsylvania:
9 the DOD, including the Army Corps of Engineers lakes (Woodcock Creek Lake, Shenango Lake,
10 Tionesta Lake, the Allegheny Reservoir, and the East Branch Clarion River Lake); the USFWS
11 (the Erie National Wildlife Reserve); and the USFS (Allegheny National Forest and Allegheny
12 National Recreation Area) (www.nationalatlas.gov).

13 **5.7.2.3 Ohio**

14 **State Historic CR Laws, Statutes, and Regulations**

15 In addition to the Federal regulatory framework governing management of cultural resources,
16 state laws (and the regulations and agreements emanating from them) govern \ treatment of
17 historic and archaeological resources in Ohio. Such laws are generally restricted to the
18 protection of cultural resources that may be threatened by Federal, state-funded, or state-
19 permitted projects. Ohio's cultural resources regulatory framework that may be relevant to
20 CBP's mission and programs are:

- 21 • Chapter 149.30, Title 1 of the Ohio Revised Code
- 22 • <http://codes.ohio.gov/orc/149>
- 23 • Chapter 149.30 of Title 1 of the Ohio Revised Code enumerates the public functions of
24 the Ohio Historical Society (OHS). Although the legislation does not have its legal basis
25 in the NHPA, it is closely related. Of the public functions of the OHS enumerated in the
26 revised code that most closely relate to the NHPA is establishment of an "inventory, in
27 cooperation with the Ohio arts council, the Ohio archaeological council, and the
28 archaeological society of Ohio, of significant designated and undesignated state and local
29 sites and keeping an active registry of all designated sites within the state." Chapter
30 149.301 of Title 1 created the Ohio Historic Site Preservation Advisory Board, members
31 of which are appointed by the governor. The board's responsibilities include
32 encouraging "the designation of suitable sites on the National Register of Historic Places
33 and under related Federal programs. The advisory board shall provide general advice,
34 guidance, and professional recommendations to the state historic preservation officer in
35 conducting the comprehensive statewide survey, preparing the state historic preservation
36 plan, and carrying out the other duties of the state historic preservation office."

1 **State Historic Preservation Office**

2 In Ohio, the Ohio Historic Preservation Office (OHPO), which is part of the OHS, serves as the
3 SHPO. Unlike in other states in the project area, Ohio’s SHPO is not a state agency, but acts on
4 behalf of the state through a non-profit organization (the OHS). According to Chapter 149.30,
5 Title 1 of the Ohio Revised Code, the OHS promotes “a knowledge of history and archaeology,
6 especially of Ohio.” Its public functions (<http://codes.ohio.gov/orc/149>) include:

- 7 • Creating and maintaining a system of state memorials for public use;
- 8 • Making alterations and improvements, marking, and protecting monuments and
9 earthworks in its care;
- 10 • Serving as the archives administration for the state and its political subdivisions;
- 11 • Administering the state historical museum;
- 12 • Establishing a marking system to identify all designated historic and archaeological sites
13 within the state;
- 14 • Publishing materials about history, archaeology, and natural science;
- 15 • Conducting research in history, archaeology, and natural science;
- 16 • Collecting, preserving, and making available all manuscript, print, or near-print library
17 collections and all historical objects, specimens, and artifacts which pertain to the history
18 of Ohio and its people;
- 19 • Promoting the development of county and local historical societies;
- 20 • Providing assistance to local societies for the preservation and restoration of historic and
21 archaeological sites;
- 22 • Taking inventory of significant designated and undesignated state and local sites and
23 keeping an active registry of all such designated sites within the state; and
- 24 • Contracting with the owners or persons with an interest in designated historic or
25 archaeological sites or property adjacent or contiguous to those sites, or otherwise
26 acquiring easements in those sites or in property adjacent or contiguous to those sites, in
27 order to control or restrict the use of those historic or archaeological sites, or adjacent or
28 contiguous property.

29 The website for the OHPO is www.ohiohistory.org/resource/histpres/etcetera/about.html.

30 Inventory and evaluation (National Register) procedures:

31 Procedures for identification, inventory, and evaluation of National Register-eligible
32 properties in Ohio follow those outlined in the ACHP guidelines for the protection of
33 Cultural and Historic Properties (36 CFR Part 800) and Chapter 149 of the Ohio Revised
34 Code. In Ohio, the Ohio Historic Site Preservation Advisory Board (OHSPAB) advises the
35 OHPO and the Ohio Historical Society on matters of historic preservation.

1 State preservation plan:

2 The OHPO Statewide Historic Preservation Plan, *A Future for Ohio's Past: A Historic*
3 *Preservation Plan for Ohioans 2010–2014*, is available for download at
4 www.ohiohistory.org/resource/histpres/toolbox/ppl/ppl-02.html.

5 Resources for identifying locations of cultural resources (GIS, web, database, etc.):

6 A map-based interactive inventory of historical and archaeological sites and surveys is
7 available online through the OHPO's online mapping system. A paid subscription is
8 required. Online access is at www.ohpo.org/gis/login.jsp.

9 Guidance to Federal agencies for 106 and other compliance:

10 Guidance related to the Section 106 review process in the state is online at
11 www.ohiohistory.org/resource/histpres/services/s106-02.html.

12 Special forms for SHPO 106 notification or identified cultural resources:

13 The OHPO employs a downloadable application for reporting on identified cultural
14 resources. The application, as well as instructions and links to other online resources, is
15 online at www.ohpo.org/iform/.

16 Requirements for research reports:

17 Requirements/standards for cultural resources investigations in Ohio are described in
18 *Archaeological Guidelines*, published by the OHPO in 1994. The guidelines are not
19 available for download, but can be purchased online at
20 www.ohiohistorystore.com/Archaeology-Guidelines-P7338C26.aspx.

21 Qualifications for cultural resources specialists:

22 Principal investigators for cultural resources investigations in Ohio are required to meet the
23 minimal qualifications described in 36 CFR Part 61 or be certified by a professional
24 archaeological association.

25 Permit or other requirements for archaeological investigations:

26 According to Ohio Revised Code §149.54, permits issued by the Director of the Ohio
27 Historical Society are required for archaeological investigation “on any land that is owned,
28 controlled, or administered by the state or any political subdivision of the state, or at any
29 archaeological preserve, dedicated under section 149.52 of the Revised Code, or at any state
30 archaeological landmark registered under section 149.51 of the Revised Code.” Otherwise,
31 the OHPO does not require a permit for archaeological investigations.

32 OHPO is not a government agency:

33 Unlike in other states, the SHPO in Ohio (i.e., the OHPO) is not a state agency. It is
34 administered by the OHS, which acts in partnership with the state and performs duties related
35 to historic preservation on the state's behalf.

1 **Tribal statutes and treaties**

2 Most important was the Treaty of Greenville (1795), which ceded the southern two-thirds of
3 Ohio to the United States. The treaty, which followed the Indian defeat at Fallen Timbers, was
4 signed by representatives (chiefs and headmen) of the Wyandot, Delaware, Shawnee, Ottawa,
5 Chippewa, Potawatomi, Miami, Wea, Kickapoo, and Kaskaskia. General "Mad Anthony"
6 Wayne represented the United States. No federally recognized Native American tribes or
7 reservations exist in Ohio.

8 **Federal lands and agencies**

9 Three Federal agencies possess land in the project area in Ohio: the DOD, including the Army
10 Corps of Engineers lakes (Charles Mill Lake, Mosquito Creek Lake, Pleasant Hill Lake, Beach
11 City Lake, Berlin Lake, Mohawk Reservoir, Atwood Lake, Leesville Lake, and Ravenna
12 Arsenal); the USFWS (the Ottawa and Cedar Point National Wildlife Refuges); and the NPS
13 (Cuyahoga Valley National Park) (www.nationalatlas.gov).

14 **5.7.2.4 Michigan**

15 **State Historic CR Laws, Statutes, and Regulations**

16 In Michigan, state regulations/standards related to cultural resources have their legislative basis
17 in Federal law, specifically Section 106 of the NHPA. Such laws are restricted to protecting
18 cultural resources that may be threatened by Federal, state-funded, or state-permitted projects.
19 The governor appoints the Michigan SHPO.

20 **State Historic Preservation Office**

21 The Michigan SHPO is part of the Michigan State Housing Development Authority (MSHDA)
22 of the Department of Energy, Labor and Economic Growth. Prior to 2009, the SHPO was part of
23 the Department of History, Arts, and Libraries. The SHPO's functions include
24 (www.michigan.gov/mshda/0,1607,7-141-54317-53069--,00.html):

- 25 • Providing assistance to local communities to identify and protect historic resources in the
26 state; and
- 27 • Administering Federal and state tax incentive and grant programs.

28 Michigan's MSHDA website is [www.michigan.gov/mshda/0,1607,7-141-54317-53069--](http://www.michigan.gov/mshda/0,1607,7-141-54317-53069--,00.html)
29 [,00.html](http://www.michigan.gov/mshda/0,1607,7-141-54317-53069--,00.html).

30 **Inventory and evaluation (National Register) procedures:**

31 Procedures for identification, inventory and evaluation of National Register-eligible
32 properties in Michigan follow those outlined in the ACHP guidelines for the protection of
33 cultural and historic properties (36 CFR Part 800). In Michigan, the Michigan State Historic
34 Preservation Review Board is responsible for reviewing and approving nominations to the
35 National Register.

1 State preservation plan

2 Michigan's current (2007–2012) state historic preservation plan, *Preservation Shore to*
3 *Shore: Making Michigan Competitive Through Historic Preservation*, is available for
4 download at www.michigan.gov/mshda/0,1607,7-141-54317_54760_27123---,00.html.

5 Resources for identifying locations of cultural resources (GIS, web, database, etc.)

6 A map-based interactive partial inventory of above-ground historical resources is available
7 through the Michigan Historical Center's historic sites online database at
8 www.mcgi.state.mi.us/hso/map.asp. A visit to the SHPO or the Office of the State
9 Archaeologist (OSA) is typically necessary for identifying archaeological sites and recently
10 inventoried above-ground properties.

11 Guidance to Federal agencies for 106 and other compliance:

12 Guidance related to the Section 106 review process in the state is online at
13 www.michigan.gov/mshda/0,1607,7-141-54317_54371-98336--,00.html and at
14 <http://mishporehab.wordpress.com/archaeology/>.

15 Special forms for SHPO 106 notification or identified cultural resources:

16 As of June, 2011, the Michigan SHPO was revising its system of inventory forms for
17 recording cultural resources. Updated forms are available by contacting the SHPO online at
18 www.michigan.gov/mshda/0,1607,7-141-54317-97306--,00.html.

19 Requirements for research reports:

20 Requirements/standards for cultural resources investigations in Michigan are described in the
21 SHPO's *Manual for Historic and Architectural Surveys in Michigan*, published in 2001. The
22 manual is available for download at www.michigan.gov/mshda/0,1607,7-141-54317_20901--
23 [-,00.html](http://www.michigan.gov/mshda/0,1607,7-141-54317_20901--).

24 Qualifications for cultural resources specialists:

25 Principal investigators for cultural resources investigations in Michigan are required to meet
26 the minimal qualifications described in 36 CFR Part 61.

27 Permit or other requirements for archaeological investigations:

28 The SHPO does not require a permit for archaeological investigations.

29 **Tribal statutes and treaties**

30 There are six Native American Reservations and other lands in the study area in Michigan, all of
31 which were established by treaty and agreements with the U.S. government in the nineteenth and
32 twentieth centuries. The Onontagon and L'Anse Reservations of the Keweenaw Bay Indian
33 Community and the Lac Vieux Desert Band of Lake Superior Chippewa Indians was established
34 by the Treaty of La Pointe, Wisconsin of 1854; the Bay Mills Indian Community of the Ojibwe
35 and the Hannahville Community of the Potawatomi were organized with the Indian
36 Reorganization Act of 1934; and the Isabella Reservation was established by a pair of treaties in

1 1855 and 1864 and was subsequently reorganized under the 1934 Indian Reorganization Act
2 (<http://gallica.bnf.fr/ark:/12148/bpt6k276283.image>; [www.law.cornell.edu/uscode/325/usc_](http://www.law.cornell.edu/uscode/325/usc_sec_25_00001300---j000-.html)
3 [sec_25_00001300---j000-.html](http://www.law.cornell.edu/uscode/325/usc_sec_25_00001300---j000-.html)).

4 Four tribes in Michigan have THPOs: the Keweenaw Bay Indian Community; the Lac Vieux
5 Desert Band of Lake Superior Chippewa Indians; the Pokagon Band of Potawatomi Indians; and
6 the Bay Mills Indian Community (<http://mishporehab.wordpress.com/?s=THPO>). No special
7 agreements exist between any of the THPOs and the SHPO.

8 **Federal lands and agencies**

9 Four Federal agencies possess land in the project area in Michigan: the DOD (including the
10 Army Corps of Engineers lakes) (K. I. Sawyer Air Force Base [closed], Camp Grayling Military
11 Reservation, Wurtsmith Air Force Base [closed], and Selfridge Air Force Base); the USFWS (the
12 Shiawassee, Michigan Islands, and Seney National Wildlife Refuges); the USFS (Hiawatha,
13 Ottawa, and Huron National Forests and the Upper Peninsula Experimental Forest), and the NPS
14 (Isle Royale National Park and Pictured Rocks National Lakeshore) (www.nationalatlas.gov).

15 **5.7.2.5 Wisconsin**

16 **State Historic CR Laws, Statutes, and Regulations**

17 In addition to the Federal regulatory framework governing the management of cultural resources,
18 state laws (and the regulations and agreements emanating from them) govern the treatment of
19 historic and archaeological resources in Wisconsin. Such laws are generally restricted to
20 protecting cultural resources that may be threatened by Federal, state-funded, or state-permitted
21 projects. Wisconsin's cultural resources regulatory framework that may be relevant to CBP's
22 mission and program are:

- 23 • Subchapter II of Chapters 44.30 to 44.48, Wisconsin Statutes and Annotations, 1987:
24 <http://legis.wisconsin.gov/statutes/Stat0044.pdf>

25 Subchapter II of Chapter 44 of the Wisconsin Statutes and Annotations establishes the
26 state's Historic Preservation Program as a counterpart to the National Historic
27 Preservation Act and declares historic preservation to be the public policy and in the
28 public interest of the state. The statute created the Wisconsin Inventory of Historic
29 Places, the official list of sites, buildings, structures, areas, or objects significant in the
30 history, architecture, archeology, or culture of the state, its communities, or the Nation.

31 Federal historic preservation laws applicable to Federal projects in Wisconsin:
32 www.cr.nps.gov/history/online_books/fhpl/contents.htm.

33 **State Historic Preservation Office**

34 The SHPO for the State of Wisconsin is the Wisconsin Historical Society (WHS). The WHS:

- 35 • Maintains inventories of historic properties;
- 36 • Administers grants;
- 37 • Conducts and supports archaeological research;

- 1 • Provides technical assistance to local governments and owners of historic properties;
- 2 • Administers Federal and state tax credit programs for the rehabilitation of historic
- 3 properties;
- 4 • Catalogs burial sites (including Native American mounds) and prehistoric sites and
- 5 structures;
- 6 • Administers the Wisconsin Historical Markers Program;
- 7 • Administers the Certified Local Government Program; and
- 8 • Nominates sites to the State and National Registers of Historic Places;

9 The WHS website is www.wisconsinhistory.org/hp/about.asp.

10 Inventory and evaluation (National Register) procedures:

11 The Wisconsin SHPO project review procedures are at [www.wisconsinhistory.org/hp/](http://www.wisconsinhistory.org/hp/protecting/106_intro.asp)
12 [protecting/106_intro.asp](http://www.wisconsinhistory.org/hp/protecting/106_intro.asp).

13 State preservation plan:

14 Wisconsin's state historic preservation plan is entitled *Wisconsin Historic Preservation Plan*
15 *2006–2015* and is at www.wisconsinhistory.org/hp/docs/plan.pdf.

16 Resources for identifying locations of cultural resources (GIS, web, database etc.):

- 17 • For state rules guiding the conduct of archaeological investigations, refer to
- 18 www.wisconsinhistory.org/archaeology/osa/index.asp.
- 19 • For state rules guiding the conduct of architectural and historical investigations, refer to
- 20 www.wisconsinhistory.org/hp/survey-manual/.
- 21 • The Wisconsin Historic Preservation database provides information on historic structures,
- 22 archaeological sites and burials within the state for registered users. For information on
- 23 access to the WHPD, refer to www.wisconsinhistory.org/hp/whpd/.
- 24 • For information on Architectural and Historic Inventory (AHI), refer to
- 25 www.wisconsinhistory.org/ahi/.

26 For information on other historic research databases pertinent to Wisconsin, refer to
27 www.wisconsinhistory.org/hp/professionals.asp.

28 Guidance to Federal agencies for 106 and other compliance:

- 29 • For SHPO project review procedures, refer to [www.wisconsinhistory.org/hp/](http://www.wisconsinhistory.org/hp/protecting/106_intro.asp)
30 [protecting/106_intro.asp](http://www.wisconsinhistory.org/hp/protecting/106_intro.asp).

31 Special forms for SHPO 106 notification or identified cultural resources:

- 32 • For forms required to initiate the 106 process in Wisconsin, refer to
33 www.wisconsinhistory.org/hp/protecting/instructions.asp.

- 1 • For forms related to the conduct of archaeological investigations in Wisconsin, refer to
2 [www.wisconsinhistory.org/archaeology/archaeologists-consultants/arch-](http://www.wisconsinhistory.org/archaeology/archaeologists-consultants/arch-resources/forms.asp)
3 [resources/forms.asp](http://www.wisconsinhistory.org/archaeology/archaeologists-consultants/arch-resources/forms.asp).

4 Requirements for research reports:

- 5 • For archaeological survey guidelines, refer to [www.wisconsinhistory.org/archaeology/](http://www.wisconsinhistory.org/archaeology/osa/index.asp)
6 [osa/index.asp](http://www.wisconsinhistory.org/archaeology/osa/index.asp).
7 • For architectural survey guidelines, refer to www.wisconsinhistory.org/ahi/.

8 Qualifications for cultural resources specialists:

- 9 • For the approved list of consultants qualified to conduct archaeological surveys in
10 Wisconsin, refer to [www.wisconsinhistory.org/archaeology/preserve/pdf/arch-](http://www.wisconsinhistory.org/archaeology/preserve/pdf/arch-consultants.pdf)
11 [consultants.pdf](http://www.wisconsinhistory.org/archaeology/preserve/pdf/arch-consultants.pdf).
12 • For the approved list of consultants qualified to excavate burials, refer to
13 www.wisconsinhistory.org/hp/burialsites/about/bs_burialexcavation.pdf
14 • For the approved list of consultants qualified to conduct architectural and historical
15 surveys, refer to [www.wisconsinhistory.org/hp/docs/architecture- history-consultants-](http://www.wisconsinhistory.org/hp/docs/architecture-history-consultants-list.pdf)
16 [list.pdf](http://www.wisconsinhistory.org/hp/docs/architecture-history-consultants-list.pdf).

17 Permit or other requirements for archaeological investigations:

- 18 • For the procedures and forms to conduct archaeological investigations on public lands,
19 refer to [www.wisconsinhistory.org/archaeology/archaeologists-consultants/public-](http://www.wisconsinhistory.org/archaeology/archaeologists-consultants/public-lands.asp)
20 [lands.asp](http://www.wisconsinhistory.org/archaeology/archaeologists-consultants/public-lands.asp).

21 **Tribal statutes and treaties**

22 Three Native American reservations and other lands exist in the study area in Wisconsin, all of
23 which were established by treaty and agreements with the U.S. government in the nineteenth and
24 twentieth centuries.. The lands of the Bad River and Red Cliff Bands of Lake Superior Chippewa
25 were established by the 1854 treaty of La Pointe and the territories of the Forest County
26 Potawatomi Community of the Potawatomi were organized by the Indian Reorganization Act of
27 1934, although the community began acquiring the Forest County land as early as 1913
28 (<http://witribes.wi.gov/docview.asp?docid=21285&locid=57>; [http://gallica.bnf.fr/ark:/12148](http://gallica.bnf.fr/ark:/12148/bpt6k276283.image)
29 [/bpt6k276283.image](http://gallica.bnf.fr/ark:/12148/bpt6k276283.image)). Wisconsin also shares an atypical government-to-government relationship
30 with the Indian Nations within its boundaries; Executive Order #39, issued in 2004, established
31 the State-Tribal Consultation Initiative. “The goal of this Initiative will be greatly improved
32 communications allowing for any potential issues to be corrected early on or avoided entirely on
33 both sides. Through the Initiative, valuable state and tribal resources are put to more effective
34 use delivering government services in a more streamlined, coordinated and economically
35 efficient manner” (<http://witribes.wi.gov/section.asp?linkid=283&locid=57>).

36 Eight tribes in Wisconsin have THPOs: the Bad River Band of Lake Superior Chippewa Indians,
37 the Ho-Chunk Nation, the Lac Courte Orielles Band of Lake Superior Chippewa Indians, the Lac
38 du Flambeau Band of Lake Superior Chippewa Indians, the Menominee Indian Tribe of
39 Wisconsin, the Oneida Nation of Wisconsin, the Red Cliff Band of Lake Superior Chippewa

1 Indians, and the Stockbridge-Munsee Community Band of Mohican Indians (see
2 www.wisconsinhistory.org/hp/protecting/106_issues_2.asp). The Wisconsin SHPO does not
3 have “review or consultative authority” in cases in which undertakings will be entirely inside one
4 of these Nations or tribal territories (www.wisconsinhistory.org/hp/protecting/106_issues_2.asp).
5 No special agreements exist between any of the THPOs and the SHPO.

6 **Federal lands and agencies**

7 Two Federal agencies possess land in the project area in Wisconsin: the USFS (Chequamegon
8 and Nicolet National Forests) and the NPS (Apostle Islands National Lakeshore)
9 (www.nationalatlas.gov).

10 **5.7.3 EAST OF THE ROCKIES REGION**

11 **5.7.3.1 Minnesota**

12 **State Historic CR Laws, Statutes, and Regulations**

13 In addition to the Federal regulatory framework governing the management of cultural resources,
14 state laws (and the regulations and agreements emanating from them) govern the treatment of
15 historic and archaeological resources in Minnesota. Such laws are generally restricted to
16 protecting cultural resources that may be threatened by Federal, state-funded, or state-permitted
17 projects. Minnesota's cultural resources regulatory framework that may be relevant to CBP's
18 mission and programs are:

- 19 • Minnesota Statutes, Chapter 138 designates the director of the Minnesota Historical
20 Society as the SHPO (MS 138.081) and places responsibility for Minnesota's historic
21 preservation program with the Minnesota Historical Society. Other sections pertaining to
22 historic and archaeological resources are:

23 Minnesota Field Archaeology Act (MS 138.31-138.42) establishes the office of the State
24 Archaeologist; requires licenses to engage in archaeology on non-Federal public land;
25 establishes ownership, custody, and use of objects and data recovered during survey; and
26 requires state agencies to submit development plans to the state archaeologist, the
27 Minnesota Historical Society, and the Minnesota Indian Affairs Council for review when
28 known or suspected archaeological sites exist in the area.

29 Minnesota Historic Sites Act (MS 138.661-138.669) establishes the State Historic Sites
30 Network and the State Register of Historic Places, and requires that state agencies consult
31 with the Minnesota Historical Society before undertaking or licensing projects that may
32 affect properties on the network or on the State or National Registers of Historic Places.

33 Minnesota Historic Districts Act (MS 138.71-138.75) designates certain historic districts
34 and enables local governing bodies to create commissions to provide architectural control
35 in these areas.

- 36 • Minnesota Statutes 471.193 enables local units of government to establish heritage
37 preservation commissions.
- 38 • Minnesota Private Cemeteries Act (MS 307.08) protects all human burials or skeletal
39 remains on public or private land.

1 **State Historic Preservation Office**

2 Minnesota's SHPO (MnSHPO) was created by state statute in 1969 to provide statewide
3 leadership. The director of the Minnesota Historical Society (MHS) serves as SHPO. The
4 mission of the MnSHPO is to:

- 5 • Identify, evaluate, register, and protect Minnesota's historic and archaeological
6 properties;
- 7 • Encourage development of local history organizations and activities; and
- 8 Assist government agencies in carrying out their historic preservation responsibilities.

9 The agency's web address is www.mnhs.org/shpo/.

10 Inventory and evaluate (National Register) procedures:

11 The SHPO runs an ongoing statewide survey program that has recorded more than 50,000
12 historic structures and approximately 16,500 archaeological sites representing every county
13 in Minnesota. Nearly 7,000 National Register properties exist in Minnesota, including
14 individual properties and historic districts.

15 State preservation plan:

16 The Minnesota State preservation plan is entitled *Gaining Ground: A Preservation Plan for*
17 *Minnesota's Historic Properties 2006–2010*, which assesses the progress made by all of
18 Minnesota's preservation partners during the previous 5-year planning period and provides
19 direction for the future. The current plan (2006) is accessible at:
20 www.mnhs.org/shpo/planning/preservationplan_2006.pdf. The plan provides a framework
21 for the ongoing work of historic preservation—resource identification, evaluation,
22 registration, and protection—by all of Minnesota's preservation partners. The plan discusses
23 Minnesota's three-tiered historic context framework:

- 24 • Broad statewide patterns encompassing three periods: Pre-Contact (9500 B.C.–A.D.
25 1650), Contact (1650–1837) and Post-Contact (1837–1945);
- 26 • Specific themes, identified as needed, to evaluate properties best understood in a
27 framework smaller than statewide patterns; and

28 Contexts developed by a particular city or other local area for use in local planning, discussing
29 six primary goals and objectives.

30 The goals of the Minnesota Plan include:

- 31 1. To create statewide awareness of and appreciation for the value of Minnesota's historic
32 and archaeological resources;
- 33 2. To make historic preservation an integral part of all levels of planning to enhance the
34 quality of life in Minnesota;
- 35 3. To strengthen the statewide network of organizations and individuals engaged in historic
36 preservation;

- 1 4. To promote historic preservation as an economic development tool and provide economic
2 incentives to encourage preservation;
- 3 5. To expand and enhance efforts to identify, evaluate, and designate historic and
4 archaeological resources; and
- 5 6. To encourage appropriate management and treatment of historic resources.

6 Resources for identifying locations of cultural resources (GIS, web, database etc.):

7 The MnSHPO maintains architecture-history and archaeological databases in Microsoft
8 Access. Various types of cultural resource searches can be requested by e-mail. The SHPO
9 also maintains a reports database for both architecture and archaeology. The database is not
10 accessible online; SHPO staff conduct searches upon request.

11 Guidance to Federal agencies for 106 and other compliance:

12 Guidance for review and compliance are contained in the Guidelines for History/Architecture
13 Projects in Minnesota (2010) and the SHPO Manual for Archaeological Projects in
14 Minnesota (2005).

15 Special forms for SHPO 106 notification or identified cultural resources:

16 Requirements for research reports in Minnesota are contained in the guidance cited above.
17 Special forms include an archeological site form and architectural site form. Both can be
18 downloaded from the agency website.

19 Qualifications for cultural resources specialists:

- 20 • The MnSHPO maintains a list of individuals and firms who have expressed an interest in
21 undertaking contract archaeology in Minnesota. The SHPO reserves the right to reject
22 contract reports if the principal investigator or other contract personnel do not meet
23 certain minimal qualifications standards listed in 36 CFR Part 61.
- 24 • The Minnesota Office of the State Archaeologist (OSA) requires that applicants for state
25 archaeological licenses (see below) meet certain professional qualifications standards.
26 These standards meet or exceed both 36 CFR Part 61 and MnSHPO standards.

27 Permit or other requirements for archaeological investigations:

28 Separate licenses are required for each phase of archaeological investigation on non-Federal
29 public land.

30 **Tribal statutes and treaties**

31 Numerous treaties with various Minnesota tribes were executed throughout the 1800s. These
32 treaties, however, were all with the Federal government. Ten reservations are associated with
33 five tribes within the CBP 100-mile operational corridor: the Red Lake Band of Chippewa
34 Indians (three non-contiguous reservation areas); the White Earth Band of Minnesota Chippewa;
35 the Leech Lake Band of Chippewa Indians; the Boise Forte Band of Chippewa Indians (Deer
36 Creek); the Boise Forte Band of Chippewa Indians (Nett Lake); the Boise Forte Band of

1 Chippewa Indians (Vermilion Lake); the Fond du Lac Band; and the Grand Portage Band of
2 Lake Superior Chippewa.

3 **Federal lands and agencies**

4 Several Federal agencies administer or maintain lands within the CBP 100-mile border corridor
5 in Minnesota, including DOD, USFWS, USFS, and NPS.

6 **5.7.3.2 North Dakota**

7 **State Historic CR Laws, Statutes, and Regulations**

8 In addition to the Federal regulatory framework governing management of cultural resources,
9 state laws (and the regulations and agreements emanating from them) govern the treatment of
10 historic and archaeological resources in North Dakota. Such laws are generally restricted to
11 protection of cultural resources that may be threatened by Federal, state-funded, or state state-
12 permitted projects. North Dakota's cultural resources regulatory framework that may be relevant
13 to CBP's mission and programs are:

- 14 • North Dakota Century Code 55-03-01 requires permits to investigate, evaluate, or
15 mitigate adverse effect on cultural resources, historic buildings, structures, or objects
16 under Section 106. It also requires permits to conduct investigations on state land.
- 17 • North Dakota Century Code 55-10-11 created the SHPO.
- 18 • North Dakota Century Code 23-06-27 protects unmarked human burials and establishes
19 treatment procedures.
- 20 • North Dakota Century Code 55-02-07 protects prehistoric and historic sites on state land
21 and restricts access to location data.
- 22 • North Dakota Century Code 55-02-09 establishes an emergency impact mitigation fund.

23 **State Historic Preservation Office**

24 The North Dakota State Historic Preservation Office (SHPO) is a division of the State Historical
25 Society of North Dakota (SHSND). The duties of the North Dakota SHPO are to:

- 26 • Locate, survey, investigate, register, identify, preserve, and protect historic, architectural,
27 archaeological and cultural sites, structures, and objects worthy of preservation;
- 28 • Evaluate historic properties for significance and nominate them to the National Register
29 of Historic Places;
- 30 • Review all Federal undertakings permitted, funded, licensed or otherwise assisted;
- 31 • Administer Federal tax incentives for the preservation of historic buildings;
- 32 • Assist Federal and state agencies in their responsibility to identify and protect historic
33 properties and archaeological sites that may be affected by their projects; and
- 34 • Provide preservation education, training, and technical assistance to individuals and
35 groups as well as local, state, and Federal agencies and tribes.

1 The agency's web address is <http://history.nd.gov/>.

2 Inventory and evaluation (National Register) procedures:

3 The Archaeology and Historic Preservation Division (AHPD) of the SHSND maintains the
4 database for cultural resources sites in North Dakota. Verified sites are indexed according to
5 the Smithsonian Institution Trinomial System. This information does not appear to be
6 available electronically or online.

7 State preservation plan

8 The North Dakota State preservation plan is entitled *Historic Preservation in North Dakota,*
9 *2010–2015: A Statewide Comprehensive Plan* and serves as a guide for preservation efforts
10 at the state and local levels. The current plan (2010) is accessible at:
11 <http://history.nd.gov/hp/PDFinfo/ND2009CompHPPlan.pdf>. It presents an overview of
12 historic and prehistoric themes and discusses six primary goals and objectives, including:

- 13 1. To provide financial and non-financial incentives for participation in historic preservation
14 efforts and program activities;
- 15 2. To increase awareness of the presence and value of cultural resources;
- 16 3. To increase the effectiveness of the state's preservation network;
- 17 4. To promote programs to identify, record, evaluate, and preserve significant cultural
18 properties;
- 19 5. To increase appropriate treatment of historic properties; and
- 20 6. To increase regular inclusion of historic preservation concerns in the planning and
21 decision-making processes of agencies, organizations, and individuals whose activities have
22 a potential to affect significant cultural resources.

23 Resources for identifying locations of cultural resources (GIS, web, database, etc.):

24 The database of information for cultural resources sites in North Dakota (the NDCRS) is
25 maintained by the AHPD of the SHSND. Verified sites are indexed according to the
26 Smithsonian Institution Trinomial System.

27 Guidance to Federal agencies for 106 and other compliance:

28 Guidance for review and compliance are contained in the North Dakota SHPO Guidelines
29 Manual for Cultural Resource Inventory Projects (2006).

30 Special forms for SHPO 106 notification or identified cultural resources:

31 Requirements for research reports in North Dakota are contained in the guidance cited above.
32 Special forms include the archeological site form, the architectural site form, and the historic
33 site form. Forms can be downloaded from the agency website.

34 Qualifications for cultural resources specialists:

35 All activities performed under a permit issued pursuant to North Dakota Century Code
36 chapter 55-03 must be conducted by or under the direct supervision of a professionally

1 qualified individual. The listed standards mirror the Federal standards in 36 CFR Part 61. A
2 standard for paleontology has been added to these state standards.

3 Permit or other requirements for archaeological investigations:

4 Permits are required.

5 **Tribal statutes and treaties**

6 Several treaties with various North Dakota tribes were executed in the mid to late 1800s. These
7 treaties, however, were all with the Federal government. Three reservations exist within the CBP
8 100-mile operational corridor: the Turtle Mountain Band of Chippewa Indians of North Dakota;
9 the Three Affiliated Tribes of the Fort Berthold Reservation (Mandan, Arikara, and Hidatsa); and
10 the Spirit Lake Tribe (Sioux).

11 **Federal lands and agencies**

12 Several Federal agencies administer or maintain lands within the CBP 100-mile border corridor
13 in North Dakota, including the Bureau of Land Management (BLM), Bureau of Reclamation,
14 DOD, USFWS, USFS, and NPS.

15 **5.7.3.3 Montana**

16 **State Historic CR Laws, Statutes, and Regulations**

17 In addition to the Federal regulatory framework governing the management of cultural resources,
18 state laws (and the regulations and agreements emanating from them) govern the treatment of
19 historic and archaeological resources in Montana. Such laws are generally restricted to the
20 protection of cultural resources that may be threatened by Federal, state-funded, or state-
21 permitted projects. Montana's cultural resources regulatory framework that may be relevant to
22 CBP's mission and programs are:

- 23 • Montana Antiquities Act, as amended (1995) addresses the responsibilities of the SHPO
24 and other state agencies regarding historic and prehistoric sites including buildings,
25 structures, paleontological sites, or archaeological sites on state-owned lands.
- 26 • Montana Human Skeletal Remains and Burial Site Protection Act (1999) provides legal
27 protection to all unmarked burial sites regardless of age, ethnic origin, or religious
28 affiliation by preventing unnecessary disturbance and prohibiting unregulated display of
29 human skeletal remains. The act created a 13-member Burial Preservation Board that
30 determines the treatment and final disposition of any discovered human remains and
31 associated burial materials.

32 **State Historic Preservation Office**

33 The Montana SHPO is a division of the Montana Historical Society (MHS). The duties of the
34 Montana SHPO are:

- 35 • Preparing and implementing a statewide Historic Preservation Plan;

- 1 • Conducting and maintaining a statewide survey to identify and document historic
2 buildings and archaeological sites;
- 3 • Evaluating historic properties for significance and nominating them to the National
4 Register of Historic Places;
- 5 • Assisting local governments in development of local historic preservation programs;
- 6 • Administering Federal tax incentives for the preservation of historic buildings;
- 7 • Assisting Federal and state agencies in their responsibility to identify and protect historic
8 properties and archaeological sites that may be affected by their projects; and
- 9 • Providing preservation education, training, and technical assistance to individuals and
10 groups as well as local, state, and Federal agencies and tribes.

11 The agency's web address is <http://mhs.mt.gov/shpo/>.

12 Inventory and evaluation (National Register) procedures:

13 The Montana SHPO maintains an inventory of more than 50,000 historic and archaeological
14 site records, which is available to agencies for research and evaluation of potential project
15 effects on cultural resources.

16 State preservation plan:

17 The Montana State preservation plan is entitled *Preserve Montana—The Montana Historic*
18 *Preservation Plan, 2008–2012* and serves as a guide for preservation efforts at the state and
19 local levels. The current plan (2008) is accessible at:
20 <http://mhs.mt.gov/shpo/surveyplanning/HistPresPlan.asp>. It presents an overview of historic
21 themes and discusses numerous goals and objectives.

22 Resources for identifying locations of cultural resources (GIS, web, database, etc.):

23 The Montana Antiquities Database contains cultural resource information on known historic
24 and archaeological sites, previously conducted cultural resource inventories, National
25 Register site status, and cultural resource management project information. The database
26 consists of three parts, including the cultural resource information system (CRIS), which
27 provides information on historical and archaeological sites; the cultural resource annotated
28 bibliography system (CRABS), which contains information on previous surveys; and Project,
29 Eligibility, & Effect Report (PEER), which includes information on the eligibility of sites
30 and effects.

- 31 • Guidance to Federal offers guidance for consulting at both the state and Federal levels.

32 Special forms for SHPO 106 notification or identified cultural resources:

33 Requirements for research reports in Idaho are contained in *Guidelines for Documenting*
34 *Archaeological and Historical Surveys*, which provides requirements and guidance for
35 completing reports and forms, including:

36 File Search Request Form

- 1 Site Form Request
- 2 CRIS Form
- 3 CRABS Form
- 4 Historic Property Record Form
- 5 Isolated Find Form
- 6 Paleontological Form
- 7 Montana PaleoIndian Point Data Form
- 8 Stone Circle Forms
- 9 Forms can be downloaded from the agency website.

10 **Qualifications for cultural resources specialists:**

11 Montana maintains a list of contractors, but does not guarantee that they meet professional
12 standards

13 **Permit or other requirements for archaeological investigations:**

14 Not required

15 **Tribal statutes and treaties**

16 Several treaties with various Montana tribes were executed in the mid-1800s. These treaties,
17 however, were all with the Federal government. There are five reservations within the CBP 100-
18 mile operational corridor, including the Chippewa-Cree Indians of the Rocky Boy's Reservation;
19 Fort Belknap Indian Community of the Fort Belknap Reservation of Montana; the Blackfeet
20 Tribe of the Blackfeet Indian Reservation of Montana; Confederated Salish & Kootenai Tribes of
21 the Flathead Reservation; and the Assiniboine and Sioux Tribes of the Fort Peck Indian
22 Reservation.

23 **Federal lands and agencies**

24 Several Federal agencies administer or maintain lands within the CBP 100-mile border corridor
25 in Montana. These agencies include the BLM, Bureau of Reclamation, DOD, USFWS, USFS,
26 and NPS.

27 **5.7.4 WEST OF THE ROCKIES REGION**

28 **5.7.4.1 Idaho**

29 **State Historic CR Laws, Statutes, and Regulations**

30 In addition to the Federal regulatory framework governing the management of cultural resources,
31 state laws (and the regulations and agreements emanating from them) govern the treatment of
32 historic and archaeological resources in Idaho. Such laws are generally restricted to protecting
33 cultural resources that may be threatened by Federal, state-funded, or state-permitted projects.
34 Idaho's cultural resources regulatory framework that may be relevant to CBP's mission and
35 programs are:

- 1 • Idaho Statute 18-7035: Damaging Caves or Caverns;
- 2 • Idaho Statute 18-7027: Desecration of grave, cemetery, headstone, or place of burial;
- 3 • Idaho Statute 18-7028: Unlawful Removal of Human Remains; and
- 4 • Idaho Statute 27-502: Protection of Graves, Prohibited Acts.

5 **State Historic Preservation Office**

6 The Idaho SHPO is a division of the Idaho State Historical Society (ISHS) and functions on a
7 grant from the NPS. The Idaho SHPO operates in six program areas:

- 8 • National Register of Historic Places Program;
- 9 • State historic and archaeological sites inventories;
- 10 • Certified local government (CLG) grants management;
- 11 • Preservation planning;
- 12 • Tax incentives; and
- 13 • Federal historic preservation project review (Section 106 Review)

14 The agency's web address is <http://history.idaho.gov/shpo.html>.

15 Inventory and evaluation (National Register) procedures:

16 The Idaho SHPO maintains an inventory of more than 50,000 historic and archaeological site
17 records, which are available to agencies for research and evaluation of potential project
18 effects on cultural resources.

19 State preservation plan:

20 The Idaho State preservation plan is entitled *A View to the Future* and serves as a general
21 guide for local governments, historical societies, and individuals interested in Idaho's
22 history. The current plan (2008) is accessible at: [http://history.idaho.gov/
23 documents/2008PreservationPlan.pdf](http://history.idaho.gov/documents/2008PreservationPlan.pdf). The plan has ten stated goals that range from
24 conducting inventory surveys to promoting training.

25 Resources for identifying locations of cultural resources (GIS, web, database, etc.):

26 Site file searches can be conducted upon application with the SHPO and returned to the
27 applicant via e-mail.

28 Guidance to Federal agencies for 106 and other compliance:

29 No additional guidance is provided beyond normal 36 CFR 800 procedures.

30 Special forms for SHPO 106 notification or identified cultural resources:

31 Requirements for research reports Idaho are contained in *Guidelines for Documenting
32 Archaeological and Historical Surveys*, which provides requirements and guidance for
33 completing reports and forms including: site report form, archaeology site inventory form;

1 and determination of eligibility form. The forms can be downloaded from the agency
2 website.

3 Qualifications for cultural resources specialists:

4 Idaho does not maintain a list of qualified cultural resources specialists.

5 Permit or other requirements for archaeological investigations:

6 Permits are not required.

7 **Tribal statutes and treaties**

8 The Idaho State-Tribal Relations Act (Title 67, Chapter 40) is an agreement with the Coeur
9 d'Alene Tribe, the Kootenai Tribe of Idaho, the Nez Perce Tribe, the Shoshone Bannock Tribes
10 of the Fort Hall Reservation, or the Shoshone-Paiute Tribes of the Duck Valley Reservation.
11 The Act created a Council on Indian Affairs, which includes tribal members. The purpose of the
12 Council is to monitor and review legislation and state policies that impact state-tribal relations in
13 the areas of jurisdiction, governmental sovereignty, taxation, natural resources, economic
14 development, and other issues in which state government and tribal government interface as well
15 as to advise the governor, legislature, and state departments and agencies on these issues. The
16 Kootenai Tribe of Idaho has a reservation within the CBP 100-mile border corridor.

17 **Federal lands and agencies**

18 Several Federal agencies administer or maintain lands within the CBP 100-mile border corridor
19 in the state. These agencies include the BLM, DOD, USFWS, and NPS.

20 **5.7.4.2 Washington**

21 **State Historic CR Laws, Statutes, and Regulations**

22 In addition to the Federal regulatory framework governing the management of cultural resources,
23 state laws (and the regulations and agreements emanating from them) govern the treatment of
24 historic and archaeological resources in Washington. Such laws are generally restricted to the
25 protection of cultural resources that may be threatened by Federal, state-funded, or state-
26 permitted projects. Washington's cultural resources regulatory framework that may be relevant
27 to CBP's mission and programs are:

- 28 • Executive Order 05-05 requires state agencies with capital improvement projects to
29 integrate the Department of Archaeology and Historic Preservation (DAHP), the
30 Governor's Office of Indian Affairs (GOIA), and concerned tribes into their capital
31 project planning process.
- 32 • Revised Code of Washington (RCW) includes provision for the protection of historic
33 cemeteries (RCW 68.60 as well as RCW 27.44) and outlines the treatment of discovered
34 human remains.
- 35 • RCW 43.51A established the Office (now Department) of Archaeology and Historic
36 Preservation and the establishment of a state Advisory Council on Historic Preservation.

1 **State Historic Preservation Office**

2 The SHPO for the State of Washington is the DAHP. The DAHP is a cabinet-level agency
3 managed by a governor-appointed director. The DAHP:

- 4 • Advocates for the preservation of Washington’s significant and irreplaceable historic and
5 cultural resources, including buildings, structures, sites, objects, and districts;
- 6 • Reviews and comments on the effect of Federal and state undertakings on historic
7 properties;
- 8 • Oversees the identification and evaluation of archaeological sites as well as historic
9 buildings, objects, and districts; and
- 10 • Promotes historic preservation through planning and public education.

11 The DAHP web address is www.dahp.wa.gov/.

12 Inventory and evaluation (National Register) procedures:

13 WAC 25-12-060 outlines procedures for the nomination and designation of historic
14 properties to the State or National Register.

15 State preservation plan:

16 The Washington State preservation plan is entitled *Sustaining Communities through Historic*
17 *Preservation—the Washington State Historic Preservation Plan 2009–2013* and can be
18 downloaded from the DAHP website. The plan has six primary goals:

- 19 1) To enhance the effectiveness of Historic Preservation efforts;
- 20 2) To strengthen the connections between historic preservation and sustainability;
- 21 3) To strengthen the role of historic preservation in local planning and community
22 revitalization;
- 23 4) To boost promotion of heritage tourism;
- 24 5) To improve the identification and protection of archeological sites and cultural
25 resources; and
- 26 6) To increase the diversity of participation in historic preservation.

27 Resources for identifying locations of cultural resources (GIS, web, database, etc.):

28 DAHP uses the Historic Property Inventory Management System (2010) and GIS-
29 Washington Information System for architectural and archaeological records data
30 WISAARD, accessed at <https://fortress.wa.gov/dahp/wisaard/>.

31 Guidance to Federal agencies for 106 and other compliance:

32 No additional guidance is provided beyond normal 36 CFR 800 procedures.

1 Special forms for SHPO 106 notification or identified cultural resources:

2 The Washington State Standards for Cultural Resource Reporting (2010) provides
3 requirements and guidance for completing reports and forms, including: cultural resources
4 survey cover sheet (must accompany all reports); archaeology site inventory form;
5 archaeology isolate inventory form; submerged historic archaeological resource registration
6 form; cemetery inventory form; and historic property inventory form. The forms can be
7 downloaded from the agency website. All reports must be submitted electronically as pdfs.

8 Qualifications for cultural resources specialists:

9 Washington does not maintain a list of qualified cultural resources specialists

10 Permit or other requirements for archaeological investigations:

11 Chapter 25-48 WAC establishes application and review procedures for issuance of
12 archaeological excavation and removal permits

13 **Tribal statutes and treaties**

14 There are 29 federally recognized tribes in Washington with 3 having reservations over 500,000
15 acres: Colville, Yakima, and Quinault. The state has numerous agreements with many tribes
16 primarily concerned with health and welfare, and taxes. The Governor's Office of Indian Affairs
17 maintains a list of treaties as well as a tribal directory (www.goia.wa.gov/). Most of the early
18 land treaties were signed from 1854 (Treaty of Medicine Creek) to 1856 (Quinault Treaty).

19 **Federal lands and agencies**

20 Several Federal agencies administer or maintain lands within the CBP 100-mile border corridor.
21 These agencies include the BLM, Bureau of Reclamation, DOD, U.S. USFS, USFWS, and NPS.

22

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