

## **RULES GUIDANCE**

### **NEW JERSEY REGISTER OF HISTORIC PLACES ACT RULES N.J.A.C. 7:4**

It has now been over a year since the revised and updated rules became effective on September 2, 2008. The New Jersey Historic Preservation Office (HPO) is providing the following guidance based on our experience working with the rules over the last year.

As background, the HPO has received approximately 30 Phase 1A Reports in the last year, most from State/federal agencies. The HPO has also received approximately 10 requests to waive the 1A Report requirement. HPO has waived the requirement in cases when it can be demonstrated that a project site does not have high potential for historic properties or where the development on a larger site will not result in ground disturbance in an area with high potential. (Examples include development in an area with demonstrated ground disturbance like a quarried area, and development of a trail where the depth of ground disturbance does not reach intact soil that may have significant deposits.)

We have provided guidance below organized by topics given in bold:

#### **Report Phases**

There have been several areas of confusion about the requirements of Phase I vs. Phase II Survey Reports.

Our best existing description of the phases of archaeological survey is in HPO's Guidelines for Phase 1 Archaeological Investigations (available at <http://www.state.nj.us/dep/hpo/1identify/arkeoguide1.htm#2.0>) the phases are described as follows:

“Phase I investigations are conducted for the purpose of identifying archaeological sites that may exist in a project area. Phase II projects are conducted to evaluate identified sites for their eligibility for listing in the National Register of Historic Places (National Register or NR). Eligible archaeological sites as well as those actually listed in the National Register are referred to as archaeological historic properties. Phase II evaluation usually entails test unit excavation rather than shovel testing or other kinds of subsurface probing often conducted during Phase I survey. Phase III projects involve treatment of archaeological historic properties, typically involving "data recovery" (i.e., salvage excavation).”

HPO is working to provide more clarity on phases of archaeological (and related architectural) survey. We are proposing a meeting to discuss phases of survey that would include the affected community: those agencies and private entities that fund survey; the

Cultural Resource Management firms and individuals that conduct the surveys; and other interested parties. As a way of working towards that meeting, which we anticipate will occur in early 2010; we have attached a document titled “Phases of Archaeological Survey in New Jersey.”

One of the concerns we have heard expressed is that the new guidelines require that some of the work – specifically evaluations of eligibility – that were part of Phase 2 survey must now be accomplished in Phase 1. We do not believe that the Rules should be understood in a way that requires identification in Phase 1. Instead the Rules allow identification at Phase 1 when that is possible. We fully expect that identification as part of Phase 1 will almost always be a negative finding of eligibility e.g. there is no potential for historic properties, and perhaps more importantly, that a few scattered artifacts are not an eligible site – and that no further survey is therefore necessary.

Several groups and individuals have expressed concern about the requirement for deed research in Phase I Survey. The requirement for deed research was established as a means to find early contact period historic archaeological sites. Many of the earliest buildings pre-date, and were gone, before the era of maps which might show them, so they are not identified through other Phase 1A survey methods.. In practice, the deed research is not being conducted at Phase 1A level of survey. While it is preferable to survey for these historic period sites as early as possible in survey efforts, it can be accomplished in Phase 1B survey in consultation with HPO.

HPO continues to use the standard terminology of reconnaissance and intensive level survey as established in “Archaeology and Historic Preservation; Secretary of the Interior’s Standards and Guidelines.” HPO’s Guidelines for Architectural Survey (<http://www.state.nj.us/dep/hpo/1identify/survarcht.htm>) follow the federal Standards and describe same two types of architectural survey, reconnaissance and intensive level. It has not been HPO’s practice to identify architectural survey as being phased in the same way that archaeological survey is, phase 1, 2 and 3.

The methods and reporting requirements of Architectural Survey have evolved primarily from the fields of history and architectural history. The methodology and reporting for archaeological survey primarily derives from the field of anthropology. These different backgrounds help explain some of the differences between Architectural and Archaeological Survey.

### **Geomorphologist**

There was initial concern that a geomorphologist was required for all Phase 1A surveys. The rules establish the geographic area where the work of a geomorphologist is warranted, but allow for flexibility in achieving the desired result. The rules allow the qualified archaeologist leading the survey to make the judgment about when a geomorphologist would aid in Phase 1A survey identification. The rules allow an archaeologist with requisite experience to evaluate the geomorphology of a site.

### **Publication Requirement – Hard Cover Binder**

Most consultants preparing Phase 1A survey have submitted their reports GBC bound, with a relatively thick clear plastic cover over the printed cover page. This binding meets the intent of the Rule.

### **Permanent Curation**

The intent of the section was to insure that if artifact collections were generated by a project, there would be a plan for the disposition of those collections. To meet the report requirement for planning for curation, it is acceptable to identify the New Jersey State Museum as the repository for artifacts recovered from New Jersey Register eligible sites.

### **Architectural Guidelines**

There has been some confusion about architectural survey guidelines. While the Rules do include requirements for reporting architectural survey, the Rules do not include any discussion of scoping or methodology for architectural survey. HPO does not anticipate publishing rules for architectural survey in the near to medium term.