

DEPARTMENT OF ENVIRONMENTAL PROTECTION
Policy Office

DOCUMENT NUMBER: 012-0700-001

TITLE: Policy for Pennsylvania Historical and Museum Commission (PHMC) and Department of Environmental Protection (DEP) Coordination During Permit Application Review and Evaluation of Historic Resources

EFFECTIVE DATE: Upon publication of notice as final in the *Pennsylvania Bulletin*

AUTHORITY: Pennsylvania History Code 37 Pa. C.S.A., § 101 *et seq.*

POLICY: It is the policy of DEP to fully cooperate with PHMC in the protection of significant archaeological sites and significant aboveground historic resources. DEP will ensure that permit applicants utilize the forms provided by PHMC to achieve those ends. PHMC's determinations are the primary source of information utilized by DEP during the permit review process for the protection of property that is or may be a significant archaeological site or a significant aboveground historic resource.

PURPOSE: The purpose of this policy is to establish procedures consistent with the Pennsylvania History Code for DEP plan approvals and permit application reviews. The intention is to provide PHMC with the information necessary to determine whether significant archaeological sites or significant aboveground historic resources may be adversely affected by an activity and to meet DEP's obligations to protect historic resources.

APPLICABILITY: This policy should be used when evaluating the protection of property that is or may be a significant archaeological site or a significant aboveground historic resource. When evaluating protection of these resources, this policy should be considered by: applicants for DEP plan approvals and permits; DEP staff; and permit review staff of County Health Departments and County Conservation Districts when conducting delegated duties on behalf of DEP.

DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements.

The policies and procedures herein are not an adjudication or a regulation. DEP does not intend to give this guidance that weight or deference. This document establishes the framework, within which DEP will exercise its administrative discretion in the future. DEP reserves the discretion to deviate from this policy statement if circumstances warrant.

PAGE LENGTH: 10 pages

I. DEFINITIONS

The following words and terms when used in this document have the following meanings, unless the context clearly indicates otherwise:

Above ground historic resource — A building, structure, object, or district that meets the minimum age consideration (50 years old) to be listed in or eligible for listing in the National Register of Historic Places.

Archaeological field investigation — Extensive controlled excavation of a significant archaeological site to study the cultural history using professionally accepted means of sampling, removing and excavating archaeological specimens, also known as phase three archaeological research or data recovery.

Archaeological resource — Archaeological remains of past human life or activities found on or below the ground. The term may include artifacts and archaeological features such as pits, hearths, trenches, postmolds and structural patterns, as well as ruins and earthen mounds and structural features.

Archaeological survey — A visual inspection and limited sampling and excavation of an archaeological site to determine the characteristics and physical extent of a site, also known as phase one or phase two archaeological research.

Determination letter — A letter provided by SHPO to the project applicant indicating SHPO's determination that a project may or may not adversely affect a significant archaeological site or a significant above ground historic resource.

Historic preservation — The research, restoration, rehabilitation and other activities furthering the protection, enhancement, preservation, or enjoyment of historic resources.

Historic property — Any historical building, ground, monument or cultural remain committed by statute to the custody of the commission. An historic property evaluated under this policy comprises any resource, including an archaeological site that meets National Register criteria and is listed in or eligible for listing in the National Register of Historic Places and requires consideration under the Pennsylvania History Code. Significant above ground historic resources and significant archaeological sites are both considered to be historic properties.

Historic resource — A building, structure, object, district, place, site, or area significant in the history, architecture, maritime heritage, archaeology, or culture of this Commonwealth, its communities or the nation.

Permit application — An application, notice of intent, request for plan approval, registration or other request for a permit.

PHMC Project Review Form — SHPO's submission form to initiate a request for consultation for compliance with the State History Code and Section 106 of the National Historic Preservation Act (NHPA).

SHPO — State Historic Preservation Office located in the Pennsylvania Historical and Museum Commission.

Significant archaeological site — An area of land which contains extensive evidence of previous prehistoric or historic human habitation or stratified deposits of animal or plant remains or manmade artifacts or human burials. SHPO determines whether an archaeological site is significant based on National Register criteria.

Significant above ground historic resource — A building, structure, object, or district that is significant based on the application of the National Register criteria and is listed in or eligible for listing in the National Register of Historic Places. SHPO determines whether an above ground historic resource is significant.

II. BACKGROUND

A. The Pennsylvania History Code

The Pennsylvania State History Code (History Code) places responsibilities on all Commonwealth agencies to cooperate with PHMC by instituting procedures and policies to assure that plans, programs, codes and regulations and activities contribute to the preservation and enhancement of all historic resources in the Commonwealth. Additionally, Commonwealth agencies must cooperate fully with PHMC in the preservation, protection and investigation of archaeological resources.

Section 507(a) of the History Code requires Commonwealth agencies to notify PHMC before undertaking any Commonwealth or Commonwealth-assisted permitted or contracted projects or when they become aware of any such undertakings that may affect archaeological resources.

B. National Historic Preservation Act (NHPA) (16 U.S.C.A. §§ 470a *et. seq*)

Section 106 of NHPA requires federal agencies to take into account the effects of federal or federally-assisted undertakings on historic properties and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings. A Federal undertaking is a project, activity, or program either funded, permitted, licensed, or approved by a Federal agency. If there are federal funds or permits involved in an undertaking, the appropriate federal agency should be involved in permit application reviews and the consideration of conditions for permits. The federal agency should take the lead in the process and ensure that the implementing regulations for Section 106 of NHPA and regulations at 36 CFR 800 are carried out.

III. COORDINATION WITH PHMC

A. Early Coordination is Encouraged

Prior to submitting a permit application to DEP, early coordination between PHMC and prospective applicants and their consultants is the most effective means of timely permit decisions. Information requested on the PHMC's Project Review Form is essential in guiding project applicants. Early awareness of significant above ground historic

resources and significant archaeological sites should guide project developments. Planning for the avoidance of sensitive areas may accelerate the review. In addition to and in preparation for the PHMC Project Review Form, PHMC suggests that the following sources of information should be consulted prior to completing the PHMC form and a DEP application:

- **Pennsylvania's Cultural Resources Geographic Information System (CRGIS).** CRGIS provides locational and historical information to the public and regulated community on thousands of known historic and archaeological sites recorded in the Commonwealth. Professional planners can apply for special access that allows them to determine whether any known archaeological sites or above ground historic resources are located within a specific area. Archaeological professionals can apply for another level of access that allows them to see the exact location of the archaeological sites. The public can access locations of all above ground historic resources as well as archaeological information that does not involve the exact location of archaeological sites. These files represent resources that have been recorded by PHMC as well as those resources provided to PHMC by other parties. It is important to remember that many parts of Pennsylvania have not been surveyed for above ground historic resources or archaeological resources and absence of data does not necessarily imply absence of resources. In addition, some of the documentation in CRGIS may be outdated and require reassessment. Project applicants can contact PHMC at 717-783-8946, to be directed on how to access information on resources or for questions and concerns. The online PHMC CRGIS can be accessed at <http://phmc.pa.gov/Preservation/Cultural-Resources-GIS>.
- **County Historical Societies.** These resources often have maps and inventories of known cemeteries and archeological and historic resources that may be affected by a proposed project. The Pennsylvania Federation of Museums and Historical Organizations' website at www.pamuseums.org maintains a searchable listing of its member organizations.
- **Historic Mapping.** Even if there are no known sites in the project area, historic maps can indicate the past location of farms, churches and cemeteries, railroads, mining facilities, and lumber and grist mills. Taking time to review these maps can help project applicants know where they can expect to find sites that are likely to have ruins or archaeological features. Historic aerial mapping that is useful to understanding the development of resources from 1937 to 1971 is available at: www.pennpilot.psu.edu.
- **County Planning Commissions and Offices.** Many county planning commissions and offices offer information, maps, and inventories of known historic and archaeological resources. County planning agencies also encourage growth and protect resources, including historic resources, in accordance with the Pennsylvania Municipalities Planning Code.

B. Completion of PHMC's Project Review Form

Under the History Code and the NHPA, PHMC is designated as the State Historic Preservation Office (SHPO). The Executive Director of the PHMC is the Pennsylvania State Historic Preservation Officer. The SHPO is the office within the PHMC where the project reviews and other SHPO activities take place. Its director is the Deputy State Historic Preservation Officer. The SHPO administers all official state historic preservation programs and activities.

For the PHMC to advise and assist DEP, federal agencies, other state agencies or their consultants in completing responsibilities set forth in Section 106 of NHPA and the History Code, PHMC has developed a Request to Initiate SHPO Consultation on State and Federal Undertakings Form, known as the SHPO Project Review Form. The procedures for consultation under Chapter 5 of the History Code and Section 106 of the NHPA are explained in detail on PHMC's website at www.phmc.state.pa.us/bhp under the Environmental Review link.

As of July 2, 2018, the SHPO Project Review Form replaced DEP's Cultural Resource Notice Form (0120-PM-PY0003). The Cultural Resource Notice Form is no longer accepted by PHMC to initiate notification for review by SHPO. Permit applicants and applicants for plan approvals should submit the SHPO Project Review Form to initiate notification for review by SHPO. After July 1, 2018, any requests submitted without the SHPO Project Review Form will be returned for resubmission. A copy of the form and guidelines for its completion are available on the Forms and Guidance page of the PHMC website: www.phmc.pa.gov/Preservation/About/Pages/Forms-Guidance.aspx. Appendix A of this policy identifies projects and activities that are exempt from the SHPO Project Review Form process.

To initiate consultation, permit applicants and applicants for plan approvals should complete the SHPO Project Review Form, provide all required related documentation requested, and submit the form and any attachments to the PHMC at the address provided on the form. The SHPO Project Review Form should be used for state permits and approvals that are subject to PHMC notice under Sections 507 and 508 of the History Code, as well as projects that are subject to Section 106 of the NHPA (i.e., the project involves federal funds or federal permit). For example, a project seeking to change the course, current or cross-section of a body of water requires a permit from DEP pursuant to 25 Pa. Code Chapter 105. Additionally, the same project may require a permit to discharge dredge or fill material into waters, pursuant to Section 404 of the federal Clean Water Act. The SHPO Project Review form should be used for this project review.

For additional information contact the PHMC State Historic Preservation Office (SHPO) at 717-783-8946 or at the following address: PHMC, State Historic Preservation Office, 400 North St., Commonwealth Keystone Bldg., 2nd Floor, Harrisburg, PA 17120-0093.

IV. DEP's PROCEDURES FOR PERMIT APPLICANTS AND PERSONS REQUESTING PLAN APPROVALS

A. DEP Permit Applications and Review of Plan Approvals

DEP's application instructions associated permitting documents and instructions for plan approvals should include PHMC notification requirements and should reference PHMC's CRGIS and SHPO Project Review Form. Unless listed as an exemption in Appendix A, persons undertaking activities and projects should submit the SHPO Project Review Form to PHMC for a review of historic properties (such as architecturally significant buildings) and significant archaeological sites.

The list of exemptions in Appendix A will guide the applicant to determine whether to submit the SHPO Project Review Form. Activities that may affect significant above ground historic resources or significant archaeological resources listed on or eligible to be listed on the National Register of Historic Places are not exempt from PHMC project review regardless of the anticipated amount of earth disturbance.

If an activity or project is not identified in Appendix A, an applicant should submit the SHPO Project Review Form unless PHMC has instructed otherwise. A permit applicant should plan accordingly to receive PHMC review in advance of submitting a DEP permit application. A complete permit application, for a project that is not exempt, should include a SHPO signed project review form, a response letter or proof of online response (when available). When the Department determines a permit application is complete, it will not delay its technical review or its final action on an application while a permit applicant and PHMC develop any voluntary plan to minimize or mitigate any adverse effect. The applicant should inform DEP of any plan developed between itself and PHMC.

DEP will process permits in accordance with its "Policy for Implementing the Department of Environmental Protection Permit Review Process and Permit Decision Guarantee" (Document # 021-2100-001) to ensure timely permit issuance.

DEP will follow its "Permit Coordination Policy" (Document No. 021-2000-301) when reviewing applications or proposed projects to ensure efficient use of resources, thorough environmental review and consistent DEP action on proposed projects before the commencement of operations, construction or other activities that require DEP permits.

B. PHMC Review

Once PHMC has processed the SHPO Project Review Form, an applicant should receive one of the following types of correspondence from PHMC within 15 days of receipt in PHMC's office or within 30 days if the application involves a joint permit with a federal agency:

1. There are **NO HISTORIC PROPERTIES** in the Area of Potential Effect.
2. The project will have **NO EFFECT** on historic properties.

3. The project will have **NO ADVERSE EFFECTS** on historic properties.
4. The project will have **NO ADVERSE EFFECTS PROVIDED CERTAIN CONDITIONS ARE MET.**
5. **SHPO REQUESTS ADDITIONAL INFORMATION.**
6. The Project will have an **ADVERSE EFFECT ON A SIGNIFICANT ABOVE GROUND HISTORIC RESOURCE.**
7. The project **MAY AFFECT SIGNIFICANT ARCHAEOLOGICAL RESOURCES** and it is the opinion of the SHPO that **AN ARCHAEOLOGICAL SURVEY SHOULD BE CONDUCTED.** The purpose of the survey is to determine if the archeological resource could be significant.

Determinations of “The Project will have No Adverse Effects Provided Certain Conditions are Met”:

If PHMC provides an opinion that a project will have **NO ADVERSE EFFECTS PROVIDED CERTAIN CONDITIONS ARE MET**, a determination letter will be sent to the applicant. DEP should consult with the applicant to ascertain what actions the applicant will take to meet the conditions or the information request. If the conditions or information request will not be met, DEP should inform PHMC.

Determinations of “SHPO Requests Additional Information”:

If PHMC provides the opinion that the **SHPO REQUESTS ADDITIONAL INFORMATION**, the signed Project Review Form and attachment outlining additional information needed for the SHPO to provide an opinion will be sent to the applicant. DEP should consult with the applicant to ensure all additional information requests are resolved so SHPO can provide an opinion. Supplemental information provided to SHPO should be reviewed and responded to within 30 days.

Determinations that a project will have an “Adverse Effect to a Significant Above Ground Historic Resource or Significant Archaeological Resource”:

If PHMC provides the opinion that the project could have an adverse effect on significant above ground historic resource or significant archaeological resources, PHMC will notify both the applicant and DEP as to the adverse effect and develop a voluntary plan to minimize or mitigate the adverse effect.

Additional Considerations

PHMC may, with consent from the property owner, perform or cause to be performed an archaeological survey or field investigation pursuant to the Pennsylvania History Code. If there are federal funds or permits involved in an undertaking, the appropriate federal agency should be involved as the lead agency in the consultation and follow the implementing regulations for Section 106 of NHPA.

If the project or activity is subject to additional statutory or regulatory obligations applicable to DEP and relating to the protection of significant above ground historic resource or significant archaeological resources, DEP should evaluate whether the conditions identified by PHMC are necessary to meet those obligations. Any additional application information needed to satisfy the statutory or regulatory obligations should be identified in the appropriate instructions for permit or plan approvals.

C. PHMC Notification Process Regarding Discoveries During the Performance of Work

If, during earth disturbance activity, historic resources or archaeological resources, including but not limited to wells, trash pits, cisterns, dark stains containing prehistoric or historic artifacts, concentrations of artifacts, fire pits/hearths and burn stains, buried foundations or other structural remains are encountered, the earth disturbance activity should cease immediately, and the permittee should notify DEP and PHMC. At all times a permittee should protect historic resources and archaeological resources in accordance with federal and state law.

If human remains are discovered during earth disturbance, the Pennsylvania State Police recommends the applicant call local authorities (i.e., Police, District Attorney, Coroner). Emergency dispatch personnel will notify the appropriate person(s). The Pennsylvania State Police also recommends that human remains not be touched or moved until the appropriate person(s) has been to the site. The applicant should also notify PHMC if human remains are discovered during earth disturbance.

Appendix A
DEP/PHMC List of Exemptions

The following projects and activities are considered exempt from this policy, if conditions are met.¹

ACTIVITY	CONDITIONS
1. Permits or approvals where no earth disturbance or alterations to above ground historic resources (including buildings, structures, and landscapes) is planned.	
2. Permits or approvals where the proposed ground disturbance activity is in areas that can be documented as having been previously disturbed.	The extent of new ground disturbance will not extend beyond that of the previous disturbance. New small flow sewage treatment systems that replace existing failing systems on residential lots are exempt.
3. Permits or approvals where proposed activity will not affect above ground historic resources or archaeological resources 50 years of age or older.	
4. Permit or approval renewals with no significant physical changes to previously authorized activities.	Changes do not involve additional earth disturbances or alterations to building, structures, and landscapes other than what was approved in previous permit.
5. Permits or approvals for replacements of existing facilities.	And meet criteria in listed Activities 1 and 3.
6. Expansions that do not extend beyond the previously approved footprint or height.	Structure or operational expansion that will occur within the original approved site.
7. Construction and maintenance of temporary road crossings, or crossings over or through regulated waters of the Commonwealth including wetlands. Replacement of 50-year old bridges are not exempt from this policy.	Temporary crossings are limited to the following: Bridge -Single span structure erected from top of bank to top of bank carrying temporary roadway over a stream. Causeway – An embankment constructed partially across or along a stream. Ford – A road crossing of a stream utilizing the existing stream bed.
8. Permits or approvals for placement of fill.	Permits needed to bring approved fill in to a project site/area. May not be exempt if the original top soil is removed before applying the fill.
9. Permits and approvals specific to agricultural plowing or tilling activities, timber harvesting and road maintenance activities.	Timber harvesting may be exempt if activity occurs on previously timbered site and the same skid lines and landing areas are used.

¹ Please be advised that this list of exemptions does not apply to federal undertakings.

ACTIVITY	CONDITIONS
<p>10. Emergency Permits and Undertakings.</p>	<p>An emergency undertaking is one that requires an immediate response to an imminent threat to public health, safety, property or the environment. Examples of emergencies may include responses to natural disasters or major environmental accidents.</p> <p>When addressing an emergency, DEP will make reasonable efforts to notify PHMC of such emergency undertakings as the situation allows.</p> <p>Some emergencies may require follow-up permits, which may not be exempt from PHMC coordination.</p>