

**FHWA, ODOT and SHPO Guidance for  
National Historic Preservation Act, Section 106 Cultural Resource Eligibility  
Determinations in Technical Reports**

The ODOT Archaeology Program has developed a White Paper on Determination of Eligibility (DOE) as it relates to archaeology sites.

**What's the problem:**

Oregon Department of Transportation (ODOT) is seeing a lack of information regarding eligibility during Phase II Testing. Currently, DOEs are only completed for sites going to Phase III Data Recovery. Many consultants assume Eligibility under Criterion D, with no supporting documentation, and additional information is needed.

**Solution:**

The Federal Highway Administration (FHWA), ODOT and the Oregon State Historic Preservation Office (SHPO) agreed to capture pertinent eligibility information *within the technical report*, instead of having consultants draft formal, lengthy and costly DOEs. This information will help FHWA get a better handle on the eligibility of sites and potential effects and will help SHPO with their decisions regarding concurrence.

**What does this mean for you:**

*The DOE guidance will apply to all new projects and those projects where the Scopes of Work (SOW)/Work Order Contracts (WOCs) are currently being negotiated. Established projects are not affected.* If consultants are making eligibility recommendations on any project, they **MUST** include a short DOE in the Appendix of the Technical Report. The White paper outlines the details. SOW and contract details should include this information.

**What are the consequences if this doesn't happen:**

Possible project delays and possible non-concurrence from SHPO: Our office will return any report that does not contain the new information. If the sufficient eligibly information is not provided, SHPO may reject the report and ask that additional information be provided.

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**FHWA, ODOT and SHPO Guidance for  
National Historic Preservation Act, Section 106 Cultural Resource Eligibility  
Determinations in Technical Reports (continued)**

The following technical report guidance has been developed among the Oregon Division of the Federal Highway Administration, the Oregon Department of Transportation (ODOT) and the Oregon State Historic Preservation Office (SHPO) to better meet Section 106 compliance, SHPO guidelines and streamline ODOT's project delivery process.

- National Register eligibility for each site identified must be discussed in the technical report for every project. This can be accomplished by including an appendix in the technical report and a summary incorporated within the Conclusions section. Documentation of each site identified must include, at a minimum:
  - 1) A statement of significance
  - 2) A discussion of integrity
  - 3) An evaluation of the property against *all* four National Register of Historic Places (NRHP) eligibility criteria (36 CFR 60.4)  
<https://www.nps.gov/subjects/historicpreservation/laws-intro.htm>
- The eligibility determination process applies to all technical reports for:
  - 1) Sites subject to testing/evaluation (Phase II) or,
  - 2) Historic or other sites that lack a subsurface component identified during pedestrian survey (Phase I)
- A thorough background/historic context discussion should occur in the body of the report that directly correlates with each site. This discussion must include the following:
  - 1) A summary of the sources used to garner information (i.e., what documents were reviewed, historical societies contacted, etc.). This background information is necessary to establish eligibility
  - 2) The background section must be site and context specific. This is critical when discussing eligibility of historic sites. SHPO agreed that eligibility may be established for a number of historic sites *without* conducting Phase II testing/evaluation given sufficient background information is provided.
- Eligibility determinations cannot be made for sites which extend beyond the project Area of Potential Effect (APE).
  - 1) Eligibility of a site cannot be determined if the site boundary extends beyond the APE. The site remains unevaluated; however, the project can treat the portion of the site within the APE as contributing or not contributing to the eligibility of the site. Using this conservative approach to eligibility, and depending upon the project's effects, the 106 determination could be "Finding of No Adverse Effect to Historic Properties" or "Finding of Adverse Effect to Historic Properties."

2) Try to "consider" what the site boundaries may be based on site type, landforms etc.

- If a site is considered eligible under Criterion D, ensure that the report provides possible research questions and provide a discussion on how information from the site will help answer those research questions. A stock phrase about adding to the existing knowledge is not acceptable.
- For all Traditional Cultural Properties (TCPs), completion of a Determination of Eligibility (DOE) document is required.
- The Oregon Department of Transportation (ODOT) and the Federal Highway Administration (FHWA) will work with the State Historic Preservation Office (SHPO) to update their Online Guidance document to specifically address eligibility issues.
- ODOT will include a short guidance chapter on the Determination of Eligibility (DOE) process in their revised Archaeology Manual
- ODOT will amend the Archaeology Standardized Scope of Work (SOW) to include these new requirements for eligibility protocol in technical reports.

[https://www.oregon.gov/ODOT/GeoEnvironmental/Docs\\_SOW/Archaeology.docx](https://www.oregon.gov/ODOT/GeoEnvironmental/Docs_SOW/Archaeology.docx)