

**Adopt Cul-H 100 to read as follows:**

**CHAPTER Cul-H 100 ORGANIZATIONAL RULES**

**PART Cul-H 101 PURPOSE AND SCOPE**

**Statutory Authority:** RSA 227-C:5; 16 U.S.C. 470

Cul-H 101.01 Purpose. The New Hampshire General Court has determined that the historical, archaeological, architectural, engineering, and cultural heritage of New Hampshire is one of the most important environmental assets of the state and that the rapid social and economic development of contemporary society threatens the remaining vestiges of this heritage. Therefore, the purpose of these rules is to engage in a comprehensive program of historical, archaeological, architectural, engineering, and cultural heritage preservation so as to promote the use and conservation of such property for the education, inspiration, pleasure, and enrichment of the citizens of New Hampshire.

Cul-H 101.02 Scope. These rules establish a uniform system for compliance with RSA 227-C:5, and describe the responsibilities of the state under the National Historic Preservation Act, 16 U.S.C. 470.

**PART Cul-H 102 DEFINITIONS**

**Statutory Authority:** RSA 227-C:5

Cul-H 102.01 “Agency” means “agency” as defined by RSA 541-A:1, II, namely “each state board, commission, department, institution, officer, or any other state official or group, other than the legislature or the courts, authorized by law to make rules or determine contested cases.” Here, “agency” refers to the division of historical resources.

Cul-H 102.02 “Appearance” means a written notification to the agency that a party or a party’s representative intends to actively participate in a hearing.

Cul-H 102.03 “Archaeology” means the systematic study of materials that have been made or altered by humans. The purpose is to gain an understanding of the entire time frame, events, and process of the human past. It involves the use of methods, techniques, and theory for locating, identifying, recovering, analyzing, and interpreting such materials and their temporal, spatial, and contextual relationships.

Cul-H 102.04 “Archaeological site” means any location, terrestrial or underwater, where materials made or modified by humans are found such as, but not limited to, aboriginal mounds, forts, earthwork, cellar holes,

cemeteries, dams, foundations, villages, camps, quarries, workshops, shipwrecks, mills, factories, and other buildings.

Cul-H 102.05 “Archaeological inventory form” means the archaeological site survey form used by the division of historical resources.

Cul-H 102.06 “Commissioner” means “commissioner” as defined in RSA 227-C:1, I, that is the commissioner of the department of cultural resources or his or her designee.

Cul-H 102.07 “Council” means council as defined in RSA 227-C:1, II, namely “the state historical resources council.”

Cul-H 102.08 “Data recovery” means the systematic removal of the materials and data that give an archaeological site its research value, and the extensive and intensive excavation of an archaeological site for the purpose of gaining a scientific understanding of past cultures and societies.

Cul-H 102.09 “Department” means “department” as defined in RSA 227-C:1, III, namely “the department of cultural resources.”

Cul-H 102.10 “Destructive field investigation” means a field investigation that alters the physical structure, associations, setting, context, or aspect of a site. There are four levels of destructive field investigations, which range from the least to the most destructive: reconnaissance Phase IA survey with or without sampling, Phase IB intensive archaeological survey, Phase II site evaluation or site examination, and Phase III data recovery.

Cul-H 102.11 “Division” means the New Hampshire division of historical resources. “Division” includes reference to the state historic preservation office.

Cul-H 102.12 “Field investigation” means “field investigation” as defined in RSA 227-C:1, IV, namely “the search for, identification of, and evaluation of historic resources, and the study of traces of human culture at any land or underwater historic property, by means of inspection, surveying, digging, excavating, or removing surface or subsurface objects, or going into a site with that intent.”

Cul-H 102.13 “Hearing” means “adjudicative proceeding” as defined by RSA 541-A:1, I, namely “the procedure to be followed in contested cases, as set forth in RSA 541-A:31 through RSA 541-A:36.”

Cul-H 102.14 "Historic preservation" means “historic preservation” pursuant to RSA 227-C:1, V, that is the research, excavation, protection,

designation, recognition, restoration and rehabilitation of buildings, structures, objects, districts, areas and sites significant in the history, architecture, archaeology, or culture of this state, its communities, or the nation.

Cul-H 102.15 "Historic property" means "historic property" as defined in RSA 227-C:1, VI, namely "any building, structure, object, district, area or site that is significant in the history, architecture, archeology or culture of this state, its communities, or the nation." Historic property includes, but is not necessarily limited to, properties that are listed, or determined to be eligible for listing, in the National Register of Historic Places and/or state Register of Historic Places; properties identified as historic properties by the state of New Hampshire pursuant to RSA 227-C; properties designated as historically significant by a local governing body, local legislative body, local land use board, or other legally established municipal board or commission such as a heritage commission; or unevaluated properties that meet the criteria for listing in the National Register of Historic Places or for designation as an historic property by the state of New Hampshire or by a local governing body, local legislative body, local land use board, or other legally established municipal board or commission such as a heritage commission.

Cul-H 102.16 "Historic resource" means, pursuant to RSA 227-C:I, VII:

- (a) Any historic property which has been listed in the National Register of Historic Places or has been determined by the keeper of the register to be eligible for the National Register under the criteria for evaluation in 36 CFR 60.6;
- (b) Any property that has been listed or that has been determined eligible for listing in the New Hampshire state register of historic places;
- (c) Any object, or group of objects, located in or associated with an historic property or that enhances an understanding and appreciation of New Hampshire history;
- (d) Skeletal remains of humans that would not be subject to the provisions of RSA 661-A and that fall under the provisions of RSA 227-C:8, VI; skeletal remains of other vertebrate animals; and other fossils within a cultural context that constitutes, or might constitute, the whole or part of an historic property;
- (e) Any object, or group of objects, and the district, area, or site they define, which may yield significant data but whose value and

significance has yet to be determined by the division of historical resources; or

- (f) Any significant data that might be used to answer research questions about an historic property, and events and processes of the human past, provided by the fields of archaeology, history, architecture, art history and such supplemental sciences as ethnography, paleoecology, and related sciences.

Cul-H 102.17 “Human remains” or “remains” means “human remains” or “remains” as defined in RSA 227-C:1, VII-a, namely “any part of the body of deceased human being in any stage of decomposition, together with any artifacts or other materials known or reliably assumed to have been on or interred with the deceased human being.”

Cul-H 102.18 “Intensive archaeological survey” means a systematic and detailed field investigation and research for the purpose of locating and identifying all resources that exist in a given area.

Cul-H 102.19 “Inventory” means the archaeological and town research files that are kept by or are under the supervision of the state archaeologist and the state survey coordinator.

Cul-H 102.20 “Inventory form” means a form used to record and understand the appearance, history, and significance of a building, structure, site, district, area, landscape, or object prior to listing on the state or National Registers of Historic Places, for a historic resources survey or planning project, or for review and compliance purposes. “Inventory form” includes an area form, individual inventory form, and an archaeological inventory form.

Cul-H 102.21 “Motion” means a request to the presiding officer for an order or ruling directing some act to be done in favor of the party making the motion, including a statement of justification or reasons for the request.

Cul-H 102.22 “National Register” means the National Register of Historic Places, which is maintained by the Secretary of the United States Department of the Interior under the provisions of the National Historic Preservation Act of 1966, as amended.

Cul-H 102.23 “Native American” means for purposes of the division’s rules:

- (a) All federally recognized Indian tribes and other nonfederally recognized Indian groups; and
- (b) Any individual members of the groups above.

Cul-H 102.24 “Natural person” means a human being.

Cul-H 102.25 “Non-destructive field investigation” means a field investigation that uses methods and techniques for study that do not alter the physical structure, associations, setting, context, or aspects of a site.

Cul-H 102.26 “Northeast” means the area of continental North America east of the Mississippi River that was glaciated.

Cul-H 102.27 “Party” means “party” as defined by RSA 541-A:1, XII, namely “each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party.” The term “party” includes all intervenors in a proceeding, subject to any limitations established pursuant to RSA 541-A:33, III.

Cul-H 102.28 “Permitee” for field investigations means the same as principal investigator.

Cul-H 102.29 “Permit application for field investigations” means the form used by the State Archaeologist to be used in order to request a permit as provided by these rules.

Cul-H 102.30 “Person” means “person” as defined by RSA 541-A:1, XIII, namely “any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.”

Cul-H 102.31 “Presiding officer” means that individual to whom the commissioner has delegated the authority to preside over a proceeding, if any; otherwise it shall mean the commissioner.

Cul-H 102.32 “Principal investigator” means the person to whom a permit is granted, whether that person is acting as an individual or representing an institution or other entity, and is the person directly responsible for the field investigation and who is held accountable for the activities of the project, the quality of the reports, and the accurate, adequate, and timely completion of the reports.

Cul-H 102.33 “Proof by a preponderance of the evidence” means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not to be true.

Cul-H 102.34 “Reconnaissance survey with sampling” means the evaluation of a given area to locate archaeological sites and/or to provide a measure from which to predict the kinds, distribution, and density of sites, using

any or all of the methods and techniques of survey without sampling plus the collection of surface and subsurface materials by means of controlled sampling and test excavation.

Cul-H 102.35 “Reconnaissance survey without sampling” means the evaluation of a given area to locate archaeological sites or to provide a measure from which to predict the kinds, distribution and density of sites, using only non-destructive methods and techniques such as walk-over inspection, the search for sites in the course of recreational diving, mapping, and remote sensing, and excluding the collection of surface and subsurface materials except for the recovery of a single item.

Cul-H 102.36 “Research design” means a plan outlining the proposed field investigation, specifying research questions, geographical limits of the investigation, research methods and techniques, work performance schedule, personnel, and expected results of the study.

Cul-H 102.37 “Research team” means the personnel who are scheduled in the permit application to participate in the field investigation.

Cul-H 102.38 “State Historic Preservation Officer (SHPO)” means the director of the division, as appointed by the governor.

Cul-H 102.40 “Site evaluation” means a field investigation at an archaeological site with sufficient testing, including subsurface excavations if appropriate, to give a preliminary definition of the size, data contents, and spatial arrangement of materials for the purpose of assessing a site’s integrity, research potential, significance, and potential eligibility for inclusion in the National Register.

Cul-H 102.41 “Skeletal analyst” means “skeletal analyst” pursuant to RSA 227-C:1, VIII-a, that is, the member of the professional staff or another professional person designated by the director of the division of historical resources with the approval of the commissioner to analyze suspected human skeletal remains.

Cul-H 102.42 “Special permit” means a permit for field investigations issued to excavate human skeletal remains.

Cul-H 102.43 “State archaeologist” means the archaeologist in the division designated by the director with the approval of the commissioner to develop, supervise and coordinate activities necessary to discharge and integrate the powers and duties of the division in the field of archeology as mandated by federal and state laws and procedures.

Cul-H 102.44 “State architectural historian” means the architectural historian in the division designated as the state’s leading authority on New Hampshire’s built environment.

Cul-H 102.45 “State curator” means “state curator as defined in RSA 227-C:1, IX-a, namely “the member of the professional staff, designated by the director of the division of historical resources with the approval of the commissioner, charged with the identification, evaluation, protection, and interpretation of state owned objects of historic significance.”

Cul-H 102.46 “State Historical Resources Council” means a council created pursuant to RSA 227-C:13 with the power and duty to approve nominations to the National Register, review and recommend the approval of the state survey, review and approve the contents of the state historic preservation plan, review and recommend application by the division for federal and other funding, review and recommend the removal of properties from the National Register, act in an advisory capacity to the division, and administer all federal funds received for historic preservation.

Cul-H 102.47 “State survey coordinator” means the architectural historian who directs and administers the division’s program to identify and document historical properties throughout the state. The state survey coordinator also creates and maintains the statewide paper and digital systems for recording historical properties and assists individuals, communities, organizations, and agencies completing historical surveys.

Cul-H 102.48 “Unmarked human burial” means “unmarked human burial” as defined in RSA 227-C1, X, namely “any interment of human remains for which there exists no grave marker or any other historical documentation providing information as to the identity of the deceased.”

## **PART CUL-H 103 DESCRIPTION OF AGENCY**

**Statutory Authority:** RSA 227-C:5; 16 USC 470

Cul-H 103.01 Cooperation with Agencies. Pursuant to RSA 227-C:9 and in order to ensure the protection and preservation of historical, archaeological, architectural and cultural resources, the division can enter into agreements or memoranda of understanding with other state agencies, departments, commissions and institutions insofar as their activities might affect historical or archaeological resources under terms that meet the requirements of RSA 227-C and the National Historic Preservation Act of 1966, as amended.

Cul-H 103.02 Administration of Federal Programs.

- (a) The division is hereby designated to administer the federal National Historic Preservation Act of 1966, 16 USC 470, and any amendments thereto, and it is authorized and empowered to prepare, maintain, and keep up to date a statewide comprehensive historic preservation plan.
- (b) The governor of New Hampshire, in accordance with New Hampshire RSA 227-C:2, has designated the director of the division of historical resources as the state historic preservation officer (SHPO).
- (c) Pursuant to the National Historic Preservation Act of 1966, as amended, established the principal responsibilities of the SHPO, which are:
  - (1) In cooperation with federal and state agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties;
  - (2) Identify and nominate eligible properties to the National Register and otherwise administer applications for listing historic properties on the National Register;
  - (3) Prepare and implement a comprehensive statewide historic preservation plan;
  - (4) Administer the state program of federal assistance for historic preservation within the state;
  - (5) Advise and assist, as appropriate, federal and state agencies and local governments in carrying out their historic preservation responsibilities;
  - (6) Cooperate with the secretary of the interior, the advisory council on historic preservation, and other federal and state agencies, local governments, and organizations and individuals to ensure that historic properties are taken into consideration at all levels of planning and development;
  - (7) Provide public information, education and training, and technical assistance relating to the federal and state historic preservation programs;

- (8) Cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified under 16 USC 470;
- (9) Consult with the appropriate federal agencies in accordance with the National Historic Preservation Act on federal undertakings that might affect historic properties and the content and sufficiency of any plans developed to protect, manage, or to reduce or mitigate harm to such properties; and
- (10) Advise and assist in the evaluation of proposals for rehabilitation projects that might qualify for federal assistance.

Cul-H 103.03 Duties of the State Architectural Historian. The state architectural historian is charged with providing curatorial care, including research and technical assistance, for all state owned buildings and structures of architectural or historical significance. The state architectural historian also provides public education in historic preservation and architectural history for the division.

**PART Cul-H 104 CREATION AND ORGANIZATION OF ADVISORY COUNCILS**

**Statutory Authority:** RSA 227-C:5, XXI

Cul-H 104.01 Advisory Councils. The SHPO can create and organize advisory councils pursuant to RSA 227-C:5, XXI, RSA 227-C:3, IV, and the National Historic Preservation Act of 1966, 16 USC 470i, as amended.

**Appendix**

Rule Number	Statute Implemented
Cul-H 101	RSA 227-C:5; 16 USC 470
Cul-H 102	RSA 227-C:5
Cul-H 103	RSA 227-C:9; 227-C:5; 16 USC 470
Cul-H 104	RSA 227-C:5, XXI; 227-C:3, IV