

Beware of our Past, It May Come Back to Haunt You... **By Bruce G. Boncke, P.E., President**

If you haven't already done so, put "Archeological Significance" on your checklist of risk issues for property development. I'm sure many of you are aware of the general importance of cultural resources and the requirements of the NY State Office of Parks, Recreation and Historical Preservation (OPRHP). If you're not, you should be, and you may need to budget significant funds and, more importantly, time to resolve these issues.

The issues of finding and preserving cultural resources that subjectively need to be saved are becoming more and more challenging. It is far easier to delineate a wetland, identify a hazardous waste and study/mitigate potential development impacts than identify historically what has happened on the land for literally thousands of years. When you do identify a historical item, how do you get a regulatory agency to sign off on its significance, which could stop or seriously modify your project? Then, throw in some NIMBY opposition looking for an issue to stop the project, give them something as subjective as this, and you have one more reason why we continue to lose business, jobs and population.

The need to address archeological significance has long been included in the SEQR process and generally has been addressed by the local community; often being handled with a "literature search". In addition, the OPRHP has a memorandum of understanding with sister State permitting agencies, such as the NYSDOT and DEC, requiring sign off/determination. Over the past few years it appears that this sister agency relationship has greatly increased time, costs and risk. On a recent project, all cultural resource concerns were included by the community in a 2-year approval/SEQR process, which had included the NYSDEC as an involved agency. When the routine permit for sanitary sewer construction was sent to NYSDEC, the result was thousands of dollars in additional archeological work, three months lost and nothing found!

We have been tracking archeological investigation costs and time lost on projects for our clients. Both are very significant, particularly considering that in the case of the projects we have looked at, no project altering cultural resources have been found. On a project that a client is trying to make "build ready" for the creation of jobs, the archeological investigation service estimates are greater than the design and approval service costs.

In addition, there does not appear to be enough cultural resource consultants available to keep up with these regulatory needs. In the Rochester area, to remain competitive, we often poll and retain consultants from as far away as Buffalo and Albany. Time and ability to complete the process may become more significant than the cost.

One of the greatest challenges with cultural resource investigations is determining when "enough is enough". By comparison, when you delineate a wetland, the methodology does not jeopardize the wetland. You then plot the limits and get on with avoiding, minimizing and/or mitigating any activity. With cultural resource investigations someone has to first determine how much literature or surface observation warrants further work. Then, the methodology of further investigation needs to be sensitive to the potential for effecting what is being looked for. The combination of uncertainty and labor intensive costs are hard to budget for.

There is little we can do about these regulations, other than make our legislative representatives aware of the cost/benefit (lack of) effects on your business. In terms of risk management, however, you should do, at least, the following:

1. Have whoever is working with you on upfront due diligence obtain a "literature search" and look at the cultural research maps in the local NYSDEC region. Similar to the wetland inventory maps, but less conclusive, these maps have areas drawn to identify areas of potential concern. But, be careful, these areas are not precise and seem to grow with any public opposition to your project.
2. In your property option agreements, include a cultural resources bailout provision or some form of renegotiation if these issues become significant to the project.
3. Based on any potential risk identified, perform any site investigation work early to minimize the effect of the time it will likely take.

BME Associates will continue to be a watchdog for our clients on these issues, and suggest courses of action that will reduce risk, be it in dollars or time. For more information on Cultural Resource Inventories, please see our April 2001 newsletter.