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EXECUTIVE DIRECTOR
JENNIFER GOODMAN

To: Meredith Hatfield, Director, Office of Energy and Planning

From: Jennifer Goodman, Director, N.H. Preservation Alliance

Date: June 5, 2014

Re: Pre-rulemaking phase

Sent by email

The N.H. Preservation Alliance appreciates the important progress toward the goal of improving the site evaluation committee process that has been made by your agency and other stakeholders.

In this document, please find our recommendations that are designed to help clarify and improve the Site Evaluation Committee process for applicants and reviewers as it relates to proposed projects' impacts on historic sites. The suggestions relate to definitions, the application process and selection criteria. They are based in existing law and policy. It is an updated version of the May 16, 2014 document posted by your office in the general criteria section at http://www.nh.gov/oep/energy/programs/sb99pre-rulemaking.htm. Staff at the N.H. Division of Historical Resources and other stakeholders contributed to the development of this document.

Please let me know if you have questions, and we look forward to continued engagement in this important activity.

cc: Brandy Chambers, Energy Analyst, Office of Energy and Planning

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| Definitions | Recommendation | Source | Notes/Points of Discussion |
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| **Adverse Effect** | § 800.5 Assessment of adverse effects. (a) (1) *Criteria of adverse effect.* An adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association. Consideration shall be given to all qualifying characteristics of a historic property, including those that may have been identified subsequent to the original evaluation of the property's eligibility for the National Register. Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative. | National Historic Preservation Act (NHPA) Section 106 | Note that "undertaking" and "project" can be used interchangeably. |
| **Alternatives Analysis** | Use National Environmental Protection Act (NEPA) process. See column to right. | NEPA | NEPA regulations lay out a process for evaluating alternatives: 40 CFR §1502.14 Alternatives including the proposed action. *Based on the information and analysis presented in the sections on the Affected Environment (§1502.15) and the Environmental Consequences (§1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining* |

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| | | | *the issues and providing a clear basis for choice among options by the decision maker and the public.* [Italics added] In this section agencies shall:<br>(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.<br>(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.<br>(c) Include reasonable alternatives not within the jurisdiction of the lead agency.<br>(d) Include the alternative of no action.<br>(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.<br>(f) Include appropriate mitigation measures not already included in the proposed action or alternatives. |
| **Area of Potential Effect (APE)** | 36 CFR § 800.16(d) geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effects is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking. | Section 106 (NHPA) | |

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| **Historic Site*** | 36 CFR § 800.16(l)(1): Historic property [site] means any prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. The term includes properties [sites] of traditional religious and cultural importance to an Indian tribe and that meet the National Register criteria. | Section 106 (NHPA) | *Using "historic site" rather than "historic property" to be consistent with current Site Evaluation Committee (SEC) language. Recommend that if changes are made to state law in the future, that "historic property" be used as consistent with existing state and federal laws.<br>For the purposes of this table, "historic property" has not been replaced with "historic site" where definitions are taken directly from other regulations.<br><br>State register of historic places properties are not included in this recommendation as N.H. RSA 227-C:33 III states "Listing a property in the state register does not prohibit any actions that may otherwise be taken by the property owner with respect to the listed property." |
| **Cumulative Effect** | Suggestions in column on right. | Section 106 (NHPA); NEPA 40 CFR §1508.7. | Section 106, at 36 CFR 800.5(1), addresses cumulative effects by noting ". . . Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative" but does not specifically define cumulative effect.<br><br>40 CFR §1508.7: The NEPA definition of a cumulative effect/impacts comes from the Council on Environmental Quality (CEQ), which defines a cumulative impact as:<br>…The impact on the environment which results from the incremental impact of the |

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| | | | action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. (40 CFR §1508.7.)<br><br>Thoughts from other sources:<br>Cumulative effects to natural, cultural, historic resources and/or human communities are not just the result of the undertaking itself, but also *other collective actions and projects* that occur in a study area over time. For example, other actions may include other local or state transportation projects, sewer service extensions or expansion projects, residential, commercial and industrial development plans and large-scale development such as a large subdivision or warehouse/distribution center (http://www.dot.wisconsin.gov/localgov/docs/landuse-cumulative.pdf.) |
| **Unreasonable Adverse Effect** | Suggestions in column on right. | Appendix A to Part 800 -- Criteria for Council Involvement in Reviewing Individual section 106 Cases: | There is no category of "unreasonable adverse effect" among Section 106 findings. (Adverse effect, as defined by Section 106, is on Page 1 of this chart.) Historic sites are irreplaceable – once gone they cannot be recreated. Possible considerations for a SEC finding of "unreasonable adverse effects" to historic sites could include projects that present substantial impacts on highly important historic properties (properties that are of |

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| | | | unusual or noteworthy importance or are a rare property type); that present substantial impacts on a large number of historic properties; or cases with substantial public concerns. |
| **Integrity of location, design, setting, materials, workmanship, feeling, association***<br><br>*Provided for informational purposes, for use in cross-discussion with other definitions presented by other working groups. Not necessarily recommended for final inclusion in SEC rules. | | National Register Bulletin 15 | **Location**: **Location is the place where the historic property was constructed or the place where the historic event occurred.** The relationship between the property and its location is often important to understanding why the property was created or why something happened. The actual location of a historic property, complemented by its setting, is particularly important in recapturing the sense of historic events and persons.<br>**Design: Design is the combination of elements that create the form, plan, space, structure, and style of a property.** A property's design reflects historic functions and technologies as well as aesthetics. It also applies to the way in which buildings, sites, or structures are related: for example, spatial relationships between major features; visual rhythms in a streetscape or landscape plantings; the layout and materials of walkways and roads; and the relationship of other features, such as statues, water fountains, and archeological sites.<br>**Setting: Setting is the physical environment of a historic property…**setting refers to the *character* of the place in which the property played its historical role. It involves *how*, not just where, the property is situated and its |

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| | | | relationship to surrounding features and open space.<br>**Materials: Materials are the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic property.** A property must retain the key exterior materials dating from the period of its historic significance.<br>**Workmanship: Workmanship is the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory.** Workmanship is important because it can furnish evidence of the technology of a craft, illustrate the aesthetic principles of a historic or prehistoric period, and reveal individual, local, regional, or national applications of both technological practices and aesthetic principles.<br>**Feeling: Feeling is a property's expression of the aesthetic or historic sense of a particular period of time.** It results from the presence of physical features that, taken together, convey the property's historic character.<br>**Association: Association is the direct link between an important historic event or person and a historic property.** A property retains association if it is the place where the event or activity occurred and is sufficiently intact to convey that relationship to an observer. |

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| **Mitigation Agreement** | A document that records the terms and conditions agreed upon to address the adverse effects of an undertaking upon historic properties [sites].<br>This document could take the form of a Memorandum of Agreement, Memorandum of Understanding, Programmatic Agreement or other legal document. | Section 106 (NHPA) | |
| **Best Practical Mitigation** | Needs further discussion. | | Mitigation strategies and best practices may differ depending on the affected resource and the nature of effect. Some resources can be recreated off-site and others cannot.<br>Definition used by others is very technology focused. The definition (Natural Environment WG) includes historic sites. |

| Application materials | Recommendation | Source | Notes/Points of Discussion |
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| **Reasonable/useful application materials** | Written documentation that confirms completion of project initiation, APE development, historic property identification, public involvement, and determination of effect per state procedures. | Section 106 (NHPA); RSA 227C:9 and state procedures | |
| **Complete application** | Finding by N.H. Division of Historical Resources and lead federal agency (if applicable) of no historic properties affected, no adverse effect, or adverse effect. | Section 106 (NHPA) | |

| Siting Criteria | Recommendation | Source | Notes/Points of Discussion |
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| **The SEC shall not issue a certificate if the proposed facility:** | 1) Has not taken all reasonable and practical measures to avoid, minimize or mitigate adverse effects to historic resources<br>2) Has an unreasonable adverse effect<br>3) Is in conflict with Master Plan/ preservation chapter.<br>4) Is in conflict with a local historic district ordinance.<br>5) Is in conflict with a community's preservation plan. | Other working group draft ideas | |

Questions/suggestions? Jennifer Goodman, N.H. Preservation Alliance, jg@nhpreservation.org or 224-2281