

# HISTORIC PRESERVATION REVIEW & COMPLIANCE

*Historic preservation "Review & Compliance" is a consultation process to identify significant historic properties so that any harm to them from government-assisted actions can be avoided or minimized. It is intended to be a conflict-resolution and problem-solving system, which balances the public interest in historic preservation with the public benefit from a variety of governmental initiatives.*

## **PUBLIC POLICY**

Historic properties that are significant in history, architecture, archaeology, engineering, and culture are recognized by both the state and the federal governments as resources to be preserved and interpreted for the benefit of all citizens. They are non-renewable resources that are important to our individual and collective identity, and they are worthy of protection, investigation, interpretation, and conservation.

This policy does not mean that all properties of sufficient age to be considered "historic" are significant resources, nor does it mean that all significant historic properties can or should be saved. Rather, it is a directive to prevent needless destruction of our tangible cultural heritage, and a challenge to seek conditions under which significant historical resources can exist in harmony with government-aided social and economic changes.

## **STATUTORY AUTHORITY**

*All federally funded, licensed, or assisted projects in New Hampshire are subject to the review requirements of Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), implemented by the procedures of the federal Advisory Council on Historic Preservation (ACHP), Protection of Historic Properties (36 CFR Part 800). See*

<http://www2.cr.nps.gov/laws/NHPA1966.htm> and <http://www.achp.gov> for more information.

Federal agencies or their legal designees are required to take into account the possible impacts of their projects on historical resources, and to submit proposed projects to the Director/State Historic Preservation Officer (SHPO) of the Division of Historical Resources, for a determination of potential effects on properties that are listed, or are eligible for listing, in the National Register of Historic Places.

## **SECTION 106 PROCESS**

*The "Section 106" procedures require public participation and consultation with the State Historic Preservation Officer and others for each part of the process:*

- 1. INITIATION:** defining the undertaking, determining the area of potential affect (APE), developing a public participation plan, and identifying other consulting parties.
- 2. IDENTIFICATION / EVALUATION OF HISTORIC PROPERTIES:** identifying those properties already listed in the National Register of Historic Places, preparing documentation for potentially eligible properties, and making a "determination of eligibility" to determine whether a property or district is eligible for the National Register. Section 106 gives equal consideration to properties that are listed in OR determined to be eligible for the National Register.

**3. DETERMINATION OF EFFECT:** applying the Advisory Council's "Criteria of Effect" and making a "determination of effect" (if the property is eligible for the National Register, whether the project will affect its historical and architectural or engineering or archaeological integrity and significance and values). If the site is part of a National Register-eligible district, the "determination of effect" considers, among other factors, whether the proposed undertaking would have an adverse effect on the district by changing the ratio of historic to non-historic properties; whether it would impact significant archaeological resources; whether it would alter the qualities of the district and its setting, associations, and historical feeling that make it eligible for the National Register; whether it would introduce visual, audible, or other elements that are incompatible with the historic nature and prevailing architectural character of the district; whether it would lead to neglect, deterioration, or destruction of historic properties; and whether it would cause or result in transfer, lease, or sale of historic properties without adequate historic preservation conditions or provisions.

**4. RESOLUTION OF ADVERSE EFFECTS:** if adverse effects of state or federal projects are identified or appear to be likely, consultation continues to identify ways to achieve the project purpose *and* to avoid, minimize, or mitigate adverse effects, taking into consideration the values of the historic property or district, the parts of the undertaking that are essential to achieving the purpose of the project, and the adequacy of planning and of funding to achieve both the project objectives and a satisfactory resolution of adverse effects. Mitigation may include avoidance, alternative treatments, redesign, relocation, data recovery, documentation, public education initiatives or interpretive measures.

**5. COMPLETION:** if consultation is successful, a Memorandum of Agreement is prepared. The MOA is a legally binding document with stipulations that describe the measures that the project sponsor and/or lead agency will take to avoid, minimize, or mitigate adverse effects. If there is no agreement, the lead agency continues consultation with the Advisory Council, and the Council's final comments must be taken into account by the agency.

## **CONSULTING PARTIES**

Changes in the ACHP regulations that became effective in January 2001 encourage early compliance with the Section 106 process. One of the most important provisions of the revised regulations is a clearer role for "consulting parties," which are defined as State Historic Preservation Officers (SHPOs), applicants, local governments, and Native American tribes and their Tribal Historic Preservation Officers (THPOs). Other organizations and individuals which have a demonstrated interest in the undertaking may also ask to become consulting parties; the federal sponsor agency, after consulting with the SHPO, decides whether they may participate. In addition to the coordination with consulting parties, the regulations call for earlier and broader general public participation in the review process. This is intended to insure that the people and entities most affected by a federally funded, assisted, or licensed project can have a stronger voice in the decisions relating to it.

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The Advisory Council has coverage of the revised regulations at its web site, [www.achp.gov](http://www.achp.gov); click on "Section 106 Regulations [Users Guide](#)." *Protecting Historic Properties: A Citizen's Guide to Section 106 Review* is online at <http://www.achp.gov/citizensguide.html> and at <http://www.achp.gov/citizensguide.pdf>. It explains the Section 106 process to the general public and shows how citizens can get involved in the process. See especially "Influencing Project Outcomes," which describes how citizens may ask to become consulting parties, and the roles of consulting parties in the Section 106 review procedures.

## USE OF NEPA COMPLIANCE TO MEET SECTION 106 REQUIREMENTS

Agencies are authorized to use the preparation of Environmental Impact Statements and Environmental Assessments under the National Environmental Policy Act to meet Section 106 needs, in lieu of following the Advisory Council process. This is a major opportunity for agencies with well-developed NEPA processes to simplify concurrent review, reduce costs to applicants, and avoid redundant paperwork.

## NEW HAMPSHIRE STATE REVIEW PROCEDURES

*All New Hampshire state-licensed, assisted, or contracted projects, activities, and programs are subject to the review requirements of a similar state law, RSA 227-C:9, as implemented by state administrative rules. State agencies, departments, commissions, and institutions are required to submit such undertakings to the SHPO for an initial determination of whether such proposed actions are located in, or may affect, historical resources.*

*For the approximately fifty historic properties in New Hampshire which received "Historic Preservation Fund" matching grants when the grants were available (1975 - 1983), there is an additional historic preservation review procedure. As a condition of receiving the federal assistance, the project sponsors granted a historic preservation deed restriction (covenant) on the property to the state historic preservation program, for a specific number of years, depending on the amount of federal assistance. The deed restriction prohibits demolition of the property, makes subdivision subject to approval by the state preservation program, and also requires that all changes to the property be reviewed and approved by the State Historic Preservation Office (in New Hampshire, the Division of Historical Resources).*

## TECHNICAL ASSISTANCE REVIEWS

If a project is conducted entirely with local or donated funds, and no federal or state funds or programs are involved, review by the Division of Historical Resources is usually not required because it is the federal or state funding which triggers the historic preservation review; if federal funds become involved later, the project should then be submitted to the Division of Historical Resources for review. However, project sponsors may request a technical assistance review from the DHR (subject to DHR staff workloads and other commitments), to determine whether the proposed work meets *The Secretary of the Interior's Standards for the Treatment of Historic Properties*, or what would be needed to meet the standards; the DHR can also recommend less costly and damaging alternatives to work that would otherwise not comply with the standards.

But, if the work or the impact of the project is contrary to the *Secretary of the Interior's Standards*, and is knowingly authorized, and if, at a later time, the sponsor does apply for federal funds or permits for work at the property, the project's eligibility for federal assistance, licenses, or approval could be jeopardized.

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## NATIONAL HISTORIC PRESERVATION ACT OF 1966 Section 106 [16 U.S.C. 470F] ADVISORY COUNCIL ON HISTORIC PRESERVATION, COMMENT ON FEDERAL UNDERTAKINGS

*The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking.*

## NEW HAMPSHIRE REVISED STATUTES ANNOTATED 227-C:9 Directive for Cooperation in the Protection of Historic Resources.

*All state agencies, departments, commissions, and institutions shall fully cooperate with the division in the location, identification, evaluation and management of historic resources, and to that end shall provide the division with appropriate information on all state licensed, assisted, or contracted projects, activities, or programs so that the division may determine the effect of such undertakings on historic resources.*

II. Upon a recommendation of the division that historic resources may be adversely affected, the commissioner shall conduct, or cause to be conducted, any necessary field investigations, subject to personnel and budgetary limitations. State agencies, departments, commissions, and institutions are authorized and encouraged to expend project funds or appropriated moneys for these field investigations.

III. When preparing to sell or transfer real property under its jurisdiction which is expected to have historic resources, or is known to have historic resources, the state, its agencies, departments, commissions, institutions and political subdivisions shall, upon a recommendation of the commissioner:

- (a) Condition the sale or transfer upon such covenants, deed restrictions, or other contractual arrangements as shall protect the historic resources for future generations.
- (b) Reserve such property from sale or transfer, provided that the reservation of such lands from sale or transfer may be confined to the actual location of the historic resources.
- (c) Defer sale or transfer of such property for the purpose of conducting field investigations, including salvage mitigation if necessary, and until the lands are released for sale or transfer by the commissioner.

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**NATIONAL HISTORIC PRESERVATION ACT OF 1966**  
**Section 110 [16 U.S.C. 470h-2]**  
(1966, AMENDED 1992)

**SEC. 110(k)**

***NO FEDERAL AGENCY  
SHALL GIVE ASSISTANCE TO AN APPLICANT  
WHO INTENDS TO INTENTIONALLY CREATE  
AN ADVERSE EFFECT***

Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the agency, after consultation with the [Advisory] Council [on Historic Preservation], determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.

**NATIONAL REGISTER OF HISTORIC PLACES CRITERIA**  
**36 CFR Part 60.4**

**CRITERIA:** The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association, and:

- A. that are associated with events that have made a significant contribution to the broad patterns of our history; *or*
- B. that are associated with the lives of persons significant in our past; *or*
- C. that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; *or*
- D. that have yielded, or may be likely to yield, information important in prehistory or history.

**CRITERIA CONSIDERATIONS:** Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria of if they fall within the certain categories.

***Code of Federal Regulations 36 CFR Part 60***  
(60.4: Criteria for Evaluation)