HISTORIC PRESERVATION COMMISSION  
WEDNESDAY, MARCH 28, 2018  
CITY HALL, ROOM 400 – 8:30 A.M.  

AGENDA 

1. CALL TO ORDER 

2. ROLL CALL 

3. APPROVAL OF FEBRUARY 28, 2018 MINUTES 

4. REGULAR BUSINESS 
   Deliberations will be held at the end of each case after public comment has been closed. No public comment is allowed during deliberations. 

   **CASE NO. HPC 18-03** 
   PUBLIC HEARING on the request of David Tegg, to obtain a Certificate of Appropriateness to allow a front door replacement, for the property located at 1012 W Moss Avenue (Parcel Identification No. 18-08-226-006), Peoria, Illinois (Council District 2) 

5. NEW BUSINESS 
   Request from the City of Peoria Community Development Department Grants Management Division for comments from the Commission regarding a proposed residential development within the North Side Historic District National Historic District, pursuant to the National Historic Preservation Act Section 106 review process. 

6. CITIZENS’ OPPORTUNITY TO ADDRESS THE COMMISSION 

7. ADJOURNMENT
WELCOME!

If you plan on speaking, please complete a Blue Speaker Form

For each case the following sequence will apply:

1. Chairperson proceeds with swearing in procedures
2. Chairperson announces the case
3. Staff enters case into the record
   a. Staff presents the case
   b. Staff answers questions from the Commission
4. Petitioner presents case and answers questions from the Commission
5. Chairperson opens the meeting to the public
6. Public comments – Chairperson may ask for response/input from staff and petitioner
7. Petitioner presents closing statements
8. Public testimony is closed (No further public comment)
9. Commission deliberates and may consult staff
10. Commission prepares findings, if applicable
11. Commission votes

All comments and questions must be directed to the Commission
February 28, 2018  HISTORIC PRESERVATION COMMISSION PROCEEDINGS  Page 1 of 2

: OFFICIAL PROCEEDINGS :

: OF THE CITY OF PEORIA, ILLINOIS :

The regularly scheduled meeting for the Historic Preservation Commission Meeting was held on Wednesday, February 28, 2018, at 8:30 a.m., City Hall, 419 Fulton Street, Room 400, with Chairperson Robert Powers presiding and with proper notice having been posted.

ROLL CALL
The following Historic Preservation Commission Commissioners were present: Deborah Dougherty, Michael Maloof, and Chairperson Robert Powers – 5. Absent: Timothy Herold, Jan Krouse, Lesley Matuszak, and Geoff Smith – 2.

Staff Present: Kimberly Smith

MINUTES
Commissioner Matuszak moved to approve the minutes of the regularly scheduled meeting held on January 24, 2018; seconded by Commissioner Herold.

The motion was approved viva voce vote 4 to 0.

SWEARING IN OF SPEAKERS
Speakers were sworn in by Staff Member Trina Bonds.

REGULAR BUSINESS

CASE NO. HPC 18-02
Public Hearing on the request of Scott Lewis, of Scott Lewis Homes, for a Certificate of Appropriateness to modify the request previously approved in HPC Case No. 17-14, for townhomes, to add an additional unit and covered parking, for the property located at 824 W Moss Avenue (Parcel Identification No. 18-08-226-030 and 18-08-226-024), Peoria, Illinois (Council District 2).

Senior Urban Planner, Kimberly Smith, Community Development Department, read Case No. HPC 18-02 into the record and presented the case as outlined in the memo.

Chairperson Powers opened the Public Hearing.

Chairperson Powers questioned the length of time a special use was valid, and verified if the additional unit would exceed density requirements.

Senior Urban Planner Kimberly Smith responded the special use was null and void if not in place and established within two years. She also noted the density requirements of the zoning district continue to be met, and that was within the scope of the approved special use.

Scott Lewis, petitioner, provided an explanation of the property and described the two carport proposals.

Petitioner Scott Lewis indicated that homeowners had been contacted in response to Commissioner Maloof’s question.

Commissioner Maloof stated he looked at the site plan and believed the changes were positive.

Chairperson Powers closed the Public Hearing.

Discussion:
Discussion occurred, as noted in the recording of the meeting.

Motion:
Commissioner Maloof made a motion to approve the request; seconded, by Commissioner Krause.

Chairperson Powers read the Findings of Fact for a Certificate of Appropriateness.

The motion was APPROVED by roll call vote 3 to 0, with Commissioner Dougherty abstaining.
Nays: 0
Abstention: 1 – Dougherty

CITIZENS’ OPPORTUNITY TO ADDRESS THE HISTORIC PRESERVATION COMMISSION
No citizens addressed the Commission, as noted in the recording of the meeting.

ADJOURNMENT
Commissioner Krouse moved to adjourn the Historic Preservation Commission Meeting; seconded by Commissioner Doughty.

The motion was approved viva voce vote 4 to 0.

The Historic Preservation Commission Meeting adjourned at approximately 8:47 a.m.

Kimberly Smith
Kimberly Smith, Senior Urban Planner
TO: Historic Preservation Commission
FROM: Kimberly Smith, Senior Urban Planner
DATE: March 21, 2018
RE: HPC CASE NO. 18-03: PUBLIC HEARING on the request of David Tegg, to obtain a Certificate of Appropriateness to allow a front door replacement, for the property located at 1012 W Moss Avenue (Parcel Identification No. 18-08-226-006), Peoria, Illinois (Council District 2)

NOTIFICATION: Mailed notification was provided to surrounding property owners within 250 radial feet of the subject site and no less than 15 days prior to the review.

REQUEST SUMMARY: The petitioner is requesting a Certificate of Appropriateness to allow a front door replacement at 1012 W Moss Avenue. This request is a follow up to HPC Case No. 16-19, in which replacement of the side porch and steps were approved; however a request in the same case to allow replacement of the front door was denied. The Commission requested a “more historically appropriate design.”

Please refer to the attached application materials for more detailed information on the modified proposal. Also included are the approving Certificate of Appropriateness and minutes from the previous case.

DISCUSSION: The Commission should consider the criteria in Historic Preservation Ordinance Section 16-64, when determining if the proposed work is compatible and appropriate.

OPTIONS:
- Approve the application as requested.
- Modify and grant the application.
- Deny the application.

If denied, the petitioner will not be able to submit an application for the same improvements until it is modified to fit the Commission’s requests, or a period of 1 year has elapsed.
Disclaimer: Data is provided ‘as is’ without warranty or any representation of accuracy, timeliness or completeness. The burden for determining fitness for, or the appropriateness for use, rests solely on the requester. The requester acknowledges and accepts the limitations of the Data, including the fact that the Data is in a constant state of maintenance. This website is NOT intended to be used for legal litigation or boundary disputes and is informational only. -Peoria County GIS Division
Certificate of Appropriateness Application  
Historic Preservation Commission

Property Information: (The property the work will be performed on)

<table>
<thead>
<tr>
<th>Address: 1012 W. MOSS AVE, PEORIA, IL</th>
<th>Zip Code: 61606-1769</th>
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<tbody>
<tr>
<td>Tax ID Number: 18-08-226-006</td>
<td>Architectural Style:  COLONIAL</td>
</tr>
</tbody>
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Applicant: (The person/organization applying.)

<table>
<thead>
<tr>
<th>Name: DAVID TELL</th>
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<tr>
<td>Company/Neighborhood Association: MOSS BRADLEY RESIDENTIAL ASSO.</td>
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<tr>
<td>Address: 1012 W. MOSS AVE.</td>
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<tr>
<td>City: PEORIA</td>
</tr>
<tr>
<td>Daytime Phone: (309) 674-6620</td>
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<tr>
<td>Applicant Signature:</td>
</tr>
</tbody>
</table>

Owner: (Skip this section if the applicant and owner information is the same)

<table>
<thead>
<tr>
<th>Name: MICHIGE A. J. TELLER</th>
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<tr>
<td>Company/Neighborhood Association: MOSS BRADLEY RESIDENTIAL ASSO.</td>
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<tr>
<td>Daytime Phone: (309) 674-6620</td>
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<tr>
<td>Owner Signature:</td>
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</table>

Contractor Information: (If available, not required)

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<tr>
<th>Name: PHILLIP J. PARKS</th>
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<tr>
<td>Company/Neighborhood Association: JIA</td>
</tr>
<tr>
<td>Address: 321 E. MAIN ST.</td>
</tr>
<tr>
<td>City: PEORIA</td>
</tr>
<tr>
<td>Daytime Phone: (309) 256-9069</td>
</tr>
</tbody>
</table>

1 of 3
Project Description:

Provide a detailed description of the work to be done. Include material types, colors, style, and methods of construction. If the work involves removal of material or structure, indicate how the historical value and visual quality of the structure will be retained and ensure the integrity of the landmark or district. You may attach separate sheets if desired.

Narrative of proposed work:

* The Narrative of Proposed Work follows on Pages 3 or 10 through 6 or 10 on attached email.

* On page 9 or 10 of email you will find drawings of proposed replacement door.

* On page 9 or 10 you will see copy of 35mm photo from Remin Public Library taken on house in 1963 provided by commissioner Harold Auw 2016.

* Photos of front of house can be found in application HPC 16-19 Request August 2016.

* This proposal by owner is intended to help restore the house to an appearance closer to what had originally been here when house was constructed in 1916.

* This proposal is based on recommendations and input from Historical Commission from Case HPC 16-19 August 2016.

* I, the applicant and also the owner request administrative approval of proposal so we can enter the order into the MFR Production Queue.
Subject: FW: Application for Certificate of Appropriateness - 1012 W. Moss Ave.

From: Kim Smith (kismith@peoriagov.org)
To: dtegg1959@yahoo.com;
CC: ihlenfeldtm2@yahoo.com; pcpshop@frontier.com;
Date: Wednesday, February 7, 2018 4:37 PM

Mr. Tegg,

Hello — my name is Kimberly Smith. We’ve been reassigned districts, and I am now the Planner for your area. As indicated below, a new application for Commission approval would be required. I’ve attached the application to this email for your reference. The next deadline is February 28, for the March 28, 2018, Historic Preservation Commission Meeting.

If you’d like to go over the application prior to submittal, I am happy to meet at your convenience. Please let me know if you have any questions.

Sincerely,

Kimberly Smith
Kimberly Smith, MBA, MAUP, AICP, Senior Urban Planner
City Hall – 419 Fulton Street, Room 300, Peoria, Illinois 61602
(309) 494-8612 – direct
kismith@peoriagov.org
www.peoriagov.org
planpeoria.com

From: Shannon Techie
Sent: Wednesday, February 07, 2018 3:54 PM
To: Kim Smith <kismith@peoriagov.org>
Subject: FW: Application for Certificate of Appropriateness - 1012 W. Moss Ave.

Kim,

Can you contact David and those he copied on the email below? Per HPC 16-19, the Commission approved porch work as proposed but denied the request to replace the front door. See attached C of A and minutes for reference.

In the letter it notes the following: Please note that the Commission did not approve the request to replace the front door as proposed. The front door proposal will need to be modified to meet the commission’s request and then submitted back to the Commission as a new application.

What is currently proposed, seems to align much better with what was there historically, so would likely be seen more favorably by the Commission, but it still needs to go back to the Commission as a new request.
Thanks,

Shannon

From: David Tegg [mailto:dtegg1959@yahoo.com]
Sent: Wednesday, February 07, 2018 12:39 PM
To: Shannon Techie <stechie@peoriagov.org>
Cc: Michael Ihlenfeldt <ihlenfeldtm2@yahoo.com>; Phillip Perkins-Shop <pcshop@frontier.com>; Mark Herrmann <mherrmann@ebbuildings.com>
Subject: Application for Certificate of Appropriateness - 1012 W. Moss Ave.

Dear Shannon Techie:

I would like to initiate a dialogue with you for the issue of a Certificate of Appropriateness for the property located at:

1012 W. Moss Ave., Peoria, IL 61606-1769

Parcel No.: 18-08-226-006

Legal: JOHN ARMSTRONGS SUB NE 1/4 SEC 8-8-8E SW 80' LOT 3

Property Owner's Name: Michael A. J. Ihlenfeldt

The application is for the replacement of the front door of the house which we would like to do sometime this spring 2018.

Please note that our original application to replace the front door was rejected by the Commission back in August 2016. In that application (HPC 16-19) we had asked for permission to replace both the kitchen porch as well as the front door. In that application the kitchen porch was approved, however the door was denied as Commissioner Herold did not think that a solid oak door looked appropriate for the design of the
house. After the meeting, Commissioner Herold went to the Peoria Public Library and found a Grassel photo taken in 1963 of the front of the house in which the original front door of the property can be seen. Please note also that any photographs that you have on file for that application (HPC 16-19) would still apply today and can be attached to this application where appropriate.

The Grassel photo of the house which I am attaching below shows the original door as having a 12 Lite arrangement below with a 1/2 round arch above which as Commissioner Herold indicated in an email to you dated August 24, 2016; also compliments the arched window directly above it on the second floor.

After considerable effort; I think we now have a proposal that will be acceptable to the Historical Commission for a replacement of the front door of this property. This proposal and design is based on the photograph that Commissioner Herold provided to us.

- The new door will have the exact outer dimensions as the existing door.
- No changes will be made to the existing door jam or to the windows that surround the door both on the sides and above.
- The new door will have a frame made of solid red oak.
- The new door, like the original shown in the 1963 photograph will have a 12 Lite window arrangement with a 1/2 round sectioned window above.
- The 12 Lite section will be triple layered glass with smooth glass being on the outside of either side of the door with a sheet of rain glass sandwiched in between. This allows for easy cleaning on either side but also allows for a degree of privacy by using the rain glass.
- The sectioned upper half round will be made only of clear glass.
- The storm door will be retained.

The person who would be coordinating the manufacture of the door is:

Mark Herrman

E. B. Buildings & Lumber Co.
610 N. Sante Fe Ave.
Princeville, IL 61559
Ph.: 309-385-2025

Approximate cost of the door is estimated at: $6,800.00 - however my understanding is that since no changes to the door jam or opening are being made, we do not need to apply for a building permit for this work.

The person who will be installing the door is:

Phillip C. Perkins
321 E. Main St.
Princeville, IL 61559
Ph.: 309-256-9069

This letter is being copied to both of these gentlemen so you can reference either of their email addresses above.

If when a certificate is issued; Mark Herrmann would have the frame manufactured, it would then be sent to Peoria where Phillip Perkins would hang it to do hinge prep and boring. The new door would then be sent back to the manufacture to have the glass inserted and the wood stained and varnished (door will NOT be painted). The finished product would then be sent back to Peoria for final installation by Phillip Perkins. Please note here that we intend on transferring all the hardware (lock, handle, hinges) from the present door to the new one.
Shannon, I will try to attach the following below:

1. The 1963 Grassel photo of the front of the house that Commissioner Herold provided us back in 2016.
2. The drawing made by Mark Herrmann of the proposed replacement door.
3. A photograph of the rain glass that we propose to use in the lower 12 Lite glass sections of the door.

It is my hope Shannon that we might be able to get administrative approval of this project from your department rather than having to make a formal presentation to the board.

I have tried to anticipate questions that the board might have which I hope I have answered above. Both Phillip Perkins and Mark Herrman have indicated that you are welcome to call them with any questions on this project that I might have overlooked.

Please contact me at your convenience so that we might set up a meeting time at City Hall where I can pay the administrative fee and fill out the proper application form. Thank you.

David

David Tegg
1012 W. Moss Ave.,
Peoria, IL. 61606-1769

2/8/2018, 8:14 AM
August 25, 2016

RE: HPC 16-19 - 1012 W MOSS AVE

On Wednesday, August 24, 2016, the Historic Preservation Commission approved a Certificate of Appropriateness to replace a side porch and steps, per submitted application and documentation, for the property located at 1012 W Moss Avenue.

Enclosed please find the Certificate of Appropriateness for your records.

Please note that the Commission did not approve the request to replace the front door as proposed. The front door proposal will need to be modified to meet the commission’s request and then submitted back to the Commission as a new application.

Should you have any questions or need additional information, please contact me at (309) 494-8649.

Sincerely,

Shannon Techie
Senior Urban Planner

Enclosure
COMMUNITY DEVELOPMENT

CERTIFICATE
OF
APPROPRIATENESS

On Wednesday, August 24, 2016, the Historic Preservation Commission approved a Certificate of Appropriateness for the property located at 1012 W MOSS AVE, Peoria, Illinois (Case No. HPC 16-19).

This Certificate of Appropriateness pertains only to the building and/or site improvements listed below. All improvements must meet applicable codes of the City of Peoria.

The Commission approved the following improvements pursuant to the information provided in the application and as presented at the hearing:

- Replace a side porch and steps, per submitted application and documentation, for the property located at 1012 W Moss Avenue

Date: 8/25/2016

Shannon Techie
Senior Urban Planner

IMPORTANT NOTICE:
Most improvements require Zoning and Building Permit(s) in addition to this Certificate of Appropriateness and it is the responsibility of the applicant to obtain all required permits before construction may begin.
Certificate of Appropriateness Application
Historic Preservation Commission

Property Information: (The property the work will be performed on)
Address: 1012 W. MOSS AVE. Zip Code 61606
Tax ID Number: 18-08-226-006 Architectural Style: COLONIAL 2 FRED KLEIN ARCHITECT

Applicant: (The person/organization applying.)
Name: MICHAEL THIENFELDT
Company/Neighborhood Association: MOSS - BRADLEY
Address: 1012 W. MOSS AVE.
City: PEORIA State: IL ZIP: 61606 - 1769
Daytime Phone: (309) 674-6020 Email: JTHIENFELDT@YAHOO.COM
Applicant Signature: [Signature] Date: 8/3/2016

Owner: (Skip this section if the applicant and owner information is the same)
Name: 
Company/Neighborhood Association: 
Address: 
City: State: ZIP: 
Daytime Phone: Email: 
Owner Signature: Date: 

Contractor Information: (If available, not required)
Name: PHILLIP PERKINS - OWNER
Company/Neighborhood Association: RAINBOW INTERNATIONAL
Address: 321 E. MAIN ST.
City: PRINCETON State: IL ZIP: 61569
Daytime Phone: (309) 256-9069 Email: PC@PERKINS@FRONTIER.COM

1 of 3

P:\IPGM\DEPARTMENT INFORMATION\FORMS AND FEES\COMMISSIONS\HPC Certificate of Appropriateness Application - Revised 11-13-12.docx
Second Project: Kitchen porch and steps replacement. (Denoted with letter 'B' on attached site plan.)

The present kitchen porch on the side of the house, as far as we can determine, is original to the design. It is obvious however that the steps have been replaced before. The contractor took measurements and pointed out that the steps there now, which are probably about 30 years old, are not to code and were not installed very well. They are made of wood which is rotting. The actual elevated floor of the porch is of interlocking planks of Douglas Fir, which is still in fairly good condition. The actual porch section adjacent to the kitchen door has a decorative surround measuring 7’ in height and consists of several vertical 1.5” x 1.5” vertical pieces that measure 7’ in height with a distance between each of 1.5”. This is for privacy and safety, as well as a decorative aspect. We intend to replace all of the wood on the porch and steps, and follow or replicate as much as possible, the original design as is. The only adjustments we intend to make are those that will make the structure more secure or stable, as well as those that ensure it complies with current building codes. We intend to replace the actual deck with Douglas Fir planking which I am told is still available, however with the steps and main vertical supports, we plan to use a material called Miratek, (a composite), which unlike treated lumber, will allow you to paint as soon as construction is complete and will not crack or split like treated lumber does.

Please note that even though this property is owned by Michael A. Ihlenfeldt, that I (David Tegg) am the one coordinating with the contractor to have the work done. If there is some aspect of this application that I have overlooked, or that you feel needs clarifying, please feel free to call or email me at the following. You are also welcome to contact Phillip Perkins the contractor, who has been to the house a number of times now and is well acquainted with our intentions.

David Tegg
309-674-6620
dtegg1959@yahoo.com
A regularly scheduled Historic Preservation Commission Meeting was held on Wednesday, August 24 2016, at 8:30 a.m., City Hall, 419 Fulton Street, Room 400, with Chairperson Robert Powers presiding.

ROLL CALL
The following Historic Preservation Commission Commissioners were present: Deborah Dougherty, Timothy Herold, Michael Maloof, Thomas Wester, and Chairperson Robert Powers – 5. Absent: Lesley Matuszak, Geoff Smith – 2.

Staff Present: Nick Mitchell, Shannon Techie, Madeline Wolf

MINUTES
Commissioner Herold moved to approve the minutes of the regularly scheduled meeting held on July 27, 2016; seconded by Commissioner Dougherty.

The motion was approved viva voce vote 5 to 0.

SWEARING IN OF SPEAKERS
Speakers were sworn in by Staff Member Madeline Wolf.

REGULAR BUSINESS
Chairperson Powers announced his abstention from the following case due to financial interest.

Chairperson Powers requested a nomination for a Chairperson pro tem as Vice Chairperson Matuszak was absent.

Motion:
Commissioner Maloof nominated Commissioner Herold as Chairperson pro tem; seconded, by Commissioner Wester.

The motion was approved viva voce vote 4 to 0.


CASE NO. HPC 16-17
Public Hearing on the request of William and Janice Heaver of Tri County Builders to obtain a Certificate of Appropriateness for a freestanding sign, landscape changes, and paint improvements for the property located at 108 NE Roanoke Avenue (Parcel Identification No. 18-04-329-006), Peoria, Illinois (Council District 2).

Senior Urban Planner, Shannon Techie, Community Development Department, read Case No. HPC 16-17 into the record and presented the case. Ms. Techie noted the requests have been completed; the case presented was the result of a complaint.

Commissioner Maloof requested confirmation the commission review was only the exterior of the building.

Ms. Techie said the commission review was exterior only. Ms. Techie noted that the removal of the evergreen tree and the paint colors could have been approved administratively if more information from the petitioner had been provided upon staff request.

Commissioner Maloof questioned if the paint color of the doors were included in the historic color pallet. Ms. Techie noted that similar colors did appear on historic color pallets; however, documentation was not provided by the applicant as required. Commissioner Maloof discussed a requirement for the reinstallation of the evergreen tree including the tree height.

Commissioner Dougherty questioned commission’s ability to require the reinstallation of the evergreen tree. Ms. Techie indicated that the Commission could require the reinstallation of landscaping, as a condition of approval, if that was the desire of the Commission.
Commissioner Wester inquired the reason for removing the tree.

Ms. Techie said the petitioner noted the inside of the tree was infested with bugs and dying. Ms. Techie noted staff requested documentation from an arborist that documented the condition of the tree; however, that was not provided.

Pro Tem Chairperson Herold opened the Public Hearing.

Janice Heaver, petitioner, said she purchased the building with intentions to offer student housing for nearby hospitals. Ms. Heaver said the proposed paint colors were part of the historic color pallet. Ms. Heaver said the tree was diseased, bug infested, and hollow; Ms. Heaver had a letter from an arborist. Ms. Heaver said the intent was to replace the evergreen tree with a maple tree because the evergreen tree visually obstructed the building. Ms. Heaver requested to install new landscaping and to resurface the concrete.

Ms. Heaver confirmed the paint color for the freestanding sign and the doors were the same, in response to Pro Tem Chairperson Herold’s inquiry.

Ms. Techie read the following two letters into the record supporting the request.

T. Lane, an interested citizen, submitted a letter of support for the request; Ms. Ling said the completed work has made a positive visual impact for the street and neighbors.

Marcella Teplitz, an interested citizen, submitted a letter of support for the request. Ms. Teplitz encouraged the continuation of work to the property as the completed improvements have reinstalled the historic integrity of the property and neighborhood.

With no further interest from the public to provide public testimony, Pro Tem Chairperson Herold closed the Public Hearing at 8:51a.m.

**Discussion:**
Commissioner Maloof referred to the endorsement by Marcella Teplitz. Commissioner Maloof expressed concern of the removal of and the replacement of the tree.

**Motion:**
Commissioner Maloof made a motion to approve the Certificate of Appropriateness with the condition to replace the tree with a new tree at least 6’ tall; and administrative approval for the roof replacement. The motion was seconded by Commissioner Wester.

The motion was approved by roll call vote.
Nays: None.

Chairperson Powers presumed the Historic Preservation Commission meeting.

**CASE NO. HPC 16-19**
Public Hearing on the request of Michael Ihlenfeldt to obtain a Certificate of Appropriateness to replace a front door, and side porch and steps, for the property located at 1012 W Moss Avenue (Parcel Identification No. 18-08-226-006), Peoria, Illinois (Council District 2).

Senior Urban Planner, Shannon Techie, Community Development Department, read Case No. HPC 16-19 into the record and presented the case.

Chairperson Powers opened the Public Hearing at 9:03a.m.
David Tegg, on behalf of petitioner, Michael Ihlenfeldt, said he was present to answer questions and receive recommendations from the commission. Mr. Tegg requested a solid oak front door replacement, which was thought to be original to the home as adjacent homes built in the same era have solid oak front doors. The solid oak door would provide additional security and safety. The porch will be rebuilt with Douglass fir. The porch and steps will be brought up to code. Mr. Tegg said he and the petitioner were systematically restoring the house as a single-family residence and restoring the original aesthetics.

Mr. Tegg said the composite material will be the same color as the plank if painted, in response to Commissioner Herold's inquiry.

Commissioner Dougherty questioned the removal of the side lights and storm door. Commissioner Dougherty questioned the requirement of a hand railing for the side porch and steps. Mr. Tegg said the side lights and frame would not be removed; the replacement door fit the existing dimensions. Mr. Tegg was uncertain of the storm door. Mr. Tegg said a hand rail was not included with the request; however, the new construction will meet building code requirements.

Commissioner Herold expressed concern for losing the glass on the front door and requested evidence of the original door.

Mr. Tegg said adjacent property owners said solid oak doors were original to the homes. Mr. Tegg said the other doors on the home are solid oak.

Commissioner Maloof questioned the replacement of the existing vertical wood panels on the porch. Commissioner Maloof questioned if the vertical wood panels were original to the home.

Mr. Tegg said the original vertical wood panels intend to be replicated. Mr. Tegg said the only change in replicating the wood structure with vertical beams would be the differences in the number of vertical pieces in order to be in compliance with code.

Commissioner Wester expressed concern the proposed front door would not replicate the original quality.

Mr. Tegg referred to a previous comment regarding the original oak door. Mr. Tegg added the proposed door was high quality, custom fabricated, solid oak door.

Chairperson Powers said he was cautious to approve the request without confirmation the building plans for the porch and stairs are compliant with the building code. Chairperson Powers asked if the petitioner was amendable to the re-direction of the steps.

Ms. Techie said the side porch and steps required a deck repair permit and must meet code. Ms. Techie said Building Safety would review the plans as part of the building permit process.

Chairperson Powers proposed a deferral to consult with Building Safety prior to commission approval.

Commissioner Herold was in support of the deferral. Commissioner Herold was not in support of the reorientation of the steps.

Mr. Tegg said the contractor indicated the number of stairs were complaint with code.

Commissioner Dougherty did not support a deferral; Dougherty suggested the commission approve the plan contingent upon administrative approval of the porch and steps after Building Safety reviewed the plans.

Commissioner Herold supported approval of the porch and steps without a railing to maintain the historic aesthetic.
Ms. Techie said the commission may approve without the railing but the petitioner must adhere to the code if the railing was a building code requirement.

Charles Bobbit, adjacent neighbor to the subject property, supported the project and his Mr. Ihlenfeldt’s commitment to historic preservation for the subject property. Mr Bobbit said he has a solid oak front door.

With no further interest from the public to provide public testimony, Chairperson Powers closed the Public Hearing at 9:30 a.m.

**Discussion:**
Commissioner Herold supported the improvements and bringing the home up to code. Commissioner Herold was not in support of the removal of the glass front door or the solid oak door replacement.

Commissioner Maloof said the petitioner noted the motivation for the solid oak door replacement was to increase security and safety. Commissioner Maloof expressed concern for the petitioner’s safety.

Commissioner Herold expressed concern the solid oak door would have a negative aesthetic impact. Commissioner Herold said the side lights may be broken into with the oak door in place; therefore, he did not feel as though security was an issue.

Commissioner Wester expressed concern for the construction of the solid oak door. Commissioner Wester was in support of the request if the replacement door was built in the same manner as a solid oak door would be built 100 years ago. Commissioner Wester applauded the petitioner for the completed and continued improvements.

Chairperson Powers noted the solid oak doors of neighboring properties may not have been approved by the commission. Chairperson Powers was inclined to vote in favor due to the support provided during the Public Hearing. Chairperson Powers said he was hesitant to require the petitioner to match exactly what was there 100 years ago.

Commissioner Herold expressed concern with the approval of the door replacement. Commissioner Herold was in support to approve porch replacement with the denial or deferral of the front door request to allow the petitioner to propose a more historically appropriate design.

**Motion:**
Commissioner Herold made a motion to approve the application as presented, with the condition if the building code required a handrail, the handrail may be approved administratively; and to deny the request for the replacement of the front door. The motion was seconded by Commissioner Wester.

The motion was approved by roll call vote.
Nays: None.

**CITIZENS’ OPPORTUNITY TO ADDRESS THE HISTORIC PRESERVATION COMMISSION**
There were no citizens who wished to address the Historic Preservation Commission at 9:53 a.m.

**UNFINISHED BUSINESS**
**REPORT BACK ON SECTION 106 PUBLIC PROCESS**
Senior Urban Planner, Shannon Techie, Community Development Department, said at the July 27, 2016 Historic Preservation Commission meeting, the Commission required an advisement summary from Director Black, in response to the following request made by Karrie Alms:

1. HPC review and comment on all current and future city projects involving federal monies (i.e.) Section 106 process as utilized at the March 23, 2016 HPC meeting for the MacArthur Highway Bridge.
2. HPC be involved in the effort to engage neighborhood associations, citizens, and any of all interested parties to develop the public involvement process for the Section 106 process through engagement, consultation, and planning of projects.

3. Lack of design standards for all heritage neighborhoods.

**Grants Coordinator, Nick Mitchell, Community Development Department,** provided the following report:

**Section 106 Requirements with Regard to Public Participation**

1. The City shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking, its effects on historic properties and the likely interest of the public

2. The City shall provide the public with information about an undertaking and its effects on historic properties and seek public comment and input

3. The City shall identify the appropriate points for seeking public input and for notifying the public of proposed actions

4. If the result of an assessment is that no adverse effect is found, then the city shall maintain a record of the finding and provide information on the finding to the public on request

5. If the result of an assessment is that an adverse effect has been found, the city shall provide an opportunity for the public to express views on resolving adverse effects

The City's Process for Conducting Section 106 Review with Regard to Public Participation

1. Conduct a yearly 'Tier 1’ City-wide environmental review covering all grant activities, which includes the section 106 process as a subpart

2. For the Tier 1 review a public notice is issued and 15-day public comment period is held

3. The Tier 1 review lays out the City's standard process to carry through compliance with section 106, namely, to clear individual project sites with the Illinois Historic Preservation Agency (IHPA) (IHPA is the State Historic Preservation Officer (SHPO); the SHPO is recognized by HUD as the primary consulting party of the section 106 process)

4. Before conducting an individual project the City sends project details to IHPA for review

5. Should IHPA find no adverse effect with an individual project, they send an official letter to the City evidencing compliance with section 106 and the City maintains a record of the finding and provides information on the finding to the public on request

6. Should IHPA find an adverse effect, the City consults with IHPA in order to decide how the process should unfold from that point and to decide when and how to further involve the public

Commissioner Herold requested additional information pertaining to the Section 106 Requirements with Regard to Public Participation, Item No. 4.

Mr. Mitchell outlined the criteria for what constitutes as an adverse effect. Mr. Mitchell noted IHPA is currently developing design standards.

Commissioner Herold expressed concern the lack of design standards would conclude no adverse effect; therefore, it would be an incomplete review. Commissioner Herold referred to the issues in the North Valley when the IHPA determined there were no adverse effects while the neighborhood disagreed.

Mr. Mitchell said the details of the project are sent to the IHPA for review. The city does not provide recommendations with the project details. Mr. Mitchell said the IHPA may visit the site to make the appropriate determination, as the IHPA did in the case Commissioner Herold referenced.

Commissioner Herold discussed the North Valley. Commissioner Herold supported HPC involvement when Federal funds were dispersed in National Historic Districts (i.e.) Section 106 process as utilized at the March 23, 2016 HPC meeting for the MacArthur Highway Bridge.

Ms. Techie requested clarification from Commissioner Herold as to whether the request was specific to commission input on design in National Historic Districts or whether the commission wanted to have control of the design.
Commissioner Herold suggested to modify regulations to state any Section 106 in National Historic Districts must involve HPC review.

Discussion ensued regarding the North Valley and recent determinations by the IHPA.

Mr. Mitchell said although there were no design standards set by the IHPA, there were standards reviewed to determine adverse effects which may provide if the change, improvement, or development was appropriate.

Commissioner Maloof requested confirmation the IHPA standards pertained to the Warehouse District.

Ms. Techie confirmed Commissioner Maloof’s inquiry and provided a map of the National Historic Districts.

Commissioner Herold referred to the recent demolition at 506 E Frye. Commissioner Herold suggested if a property was non-owner occupied and bank owned, the subject property would not have to consent to be landmarked in an effort to reduce the number of demolished historic (without legal historic designation) homes.

Commissioner Dougherty supported aligning the local Historic Districts with the National Historic Districts.

Discussion ensued regarding the designation process for local historic landmarks.

Commissioner Maloof noted the difficulty of communication with bank owned properties.

Commissioner Herold questioned the process of creating a neighborhood overlay district.

Ms. Techie said the Land Development Code was separate from the Historic Preservation Ordinance.

Commissioner Maloof expressed concern with the developments in the Warehouse District without HPC approval.

Ms. Techie noted the Warehouse District was a National Historic District.

Commissioner Herold expressed concern for the lack of HPC input with Federal funds provided to developers to rehabilitate the Warehouse District.

Ms. Techie requested clarification the commission strictly requested input rather than HPC approval in National Historic Districts.

Commissioner Herold referred to the HPC input for the reconstruction of the MacArthur Highway Bridge and supported that process. Commissioner Herold inquired the formation of Form Districts.

Commissioner Maloof echoed Commissioner Herold’s recommendations.

Chairperson Powers noted City Staff was providing great responses to the commission’s discussion and inquiries. Chairperson Powers suggested an expansion of existing historic districts rather than new designations. Chairperson Powers suggested the commission revisit the designation process but noted that discussion was separate from Agenda Item No. 6, Report Back on Section 106 Public Process. Chairperson Powers suggested the discussion on landmark designation be included on a future agenda.

Motion:
Commissioner Herold made a motion to receive and file; seconded by Commissioner Dougherty.

The motion was approved viva voce vote 5 to 0.
DISCUSSION ON HISTORIC PRESERVATION EDUCATIONAL MATERIAL
An update was not provided to the commission; an update will be provided at the next commission meeting.

ADJOURNMENT
Commissioner Herold moved to adjourn the Historic Preservation Commission Meeting; seconded by Commissioner Wester.

The motion was approved viva voce vote 5 to 0.

The Historic Preservation Commission Meeting adjourned at approximately 10:21 a.m.

Shannon Techie, Senior Urban Planner

Madeline Wolf, Development Technician
The commission shall consider, where applicable, the following criteria in determining whether or not proposed work is compatible and appropriate:

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<tr>
<td>YES</td>
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<td>1.</td>
<td>Every reasonable effort shall be made to provide a compatible use for a property that requires minimal alteration of the building, structure or site and its environment or to use a property for its originally intended purpose.</td>
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<td>2.</td>
<td>The distinguishing original qualities or character of a building, structure or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural feature should be avoided when possible.</td>
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<td>3.</td>
<td>All buildings, structures and sites shall be recognized as products of their own time.</td>
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<td>4.</td>
<td>Alterations that have no historical basis and that seek to create an earlier appearance shall be discouraged.</td>
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<td>5.</td>
<td>Changes that may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right, and this significance shall be recognized and respected.</td>
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<td>6.</td>
<td>Distinctive stylistic features or examples of skilled craftsmanship that characterize a building, structure or site shall be treated with sensitivity.</td>
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<td>7.</td>
<td>Deteriorated architectural features shall be repaired rather than replaced whenever possible. In the event that replacement is necessary, the new material should match the material being replaced in composition, design, color, texture and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features substantiated by historic, physical or pictorial evidence rather on conjectural design or the availability of different architectural elements from other buildings or structures.</td>
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<td>8.</td>
<td>The surface cleaning of structures shall be undertaken with the gentlest means possible. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.</td>
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<td>9.</td>
<td>Every reasonable effort shall be made to protect and preserve archeological resources affected by or adjacent to any project.</td>
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<td>10.</td>
<td>Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material and such design is compatible with the size, scale, color, materials and character of the property, neighborhood or environment.</td>
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<td>11.</td>
<td>Whenever possible, new additions or alterations shall be done in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired.</td>
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11. The proposed work conforms to the following design criteria as well as any specific guidelines:

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<td>a. Height. The height of the proposed structure or additions or alterations should be compatible with surrounding structures.</td>
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<td>b. Proportions of structure's front facade. The proportion between the width and height of the proposed structure should be compatible with nearby structures.</td>
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<td>c. Proportions of openings into the facility. The proportions and relationships between doors and windows should be compatible with existing structures.</td>
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<td>d. Relationship of building masses and spaces. The relationship of a structure to the open space between it and adjoining structures should be compatible.</td>
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<td>e. Roof shapes. The design of the roof should be compatible with adjoining structures.</td>
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<td>f. Landscape and appurtenances. Landscaping and the use of appurtenances should be sensitive to the individual structures, its occupants and their needs. Further, the landscape treatment should be compatible with surrounding structures and landscapes.</td>
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<td>g. Scale of structure. The scale of the structure should be compatible with surrounding structures.</td>
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<td>h. Directional expression from elevation. Street facades should blend with other structures with regard to directional expression. When adjacent structures have a dominant horizontal or vertical expression, this should be carried over and reflected.</td>
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<td>i. Architectural details. Architectural details and materials should be incorporated as necessary to relate the new with the old and to preserve and enhance the inherent characteristics of that area.</td>
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**MOTION:**

**INITIATED BY:**

**SECOND:**

**SIGNATURES**

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<td>Chairperson Robert Powers</td>
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<td>Commissioner Tim Herold</td>
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<td>Commissioner Jan Krouse</td>
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<td>Commissioner Michael Maloof</td>
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<td>Commissioner Lesley Matuszak</td>
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<td>Commissioner Geoffrey Smith</td>
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**VOTE:**

Approved _________ Denied _________ _____ to _____
TO: Historic Preservation Commission  
FROM: Nick Mitchell, Senior Grants Coordinator  
DATE: March 28, 2018  
CASE NO: N/A – Participation in Sec. 106 Review.  
SUBJECT: Public Hearing regarding a proposed residential development within the North Side Historic District, National Historic District, pursuant to the National Historic Preservation Act Section 106 review process

NOTIFICATION: Mailed notification was provided to surrounding residents in the Area of Potential Effect (APE)

SUMMARY

Section 16-37 of the Code of Ordinances on ‘Powers and Duties’, authorizes the Commission to “cooperate with…governmental agencies and not-for-profit organizations in matters involving historic preservation” (16-37(14)). The Community Development Department is requesting the Commission’s participation in the Sec. 106 review process for a housing development in the North Side Historic District for the purposes of providing comment and a setting for a public hearing.

Review Process
The City of Peoria is an entitlement jurisdiction that receives Housing and Urban Development (HUD) funds for housing development. A developer has requested a portion of this funding in support of a residential, homeownership development in the North Side Historic District. The National Historic Preservation Act requires that any federally supported undertaking undergo a review process regarding its potential effect on historic properties. Given that this proposal falls within a historic district, all property in the APE is considered historic. Therefore, the project must be assessed to determine whether its effect on historic properties is adverse or not.

The implementing regulations for the Section 106 process at Title 36 Part 800 of the Code of Federal Regulations (available at www.ecfr.gov) describe the criteria for an adverse effect as follows:

"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.” (36CFR800.5(a)(1))

The regulations provide the following as examples of an adverse effect:

(i) Physical destruction of or damage to all or part of the property;
(ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines;
(iii) Removal of the property from its historic location;
(iv) Change of the character of the property's use or of physical features within the property’s setting that contribute to its historic significance;
(v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;
(vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and
(vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

Comments solicited from the HPC and the public are meant to inform the City’s determination of whether or not this project would cause an adverse effect on the historic property in the APE. Proposed modifications are welcome for any alleged adverse effect.

Project
The proposal at hand is for the construction of four, single-family homes at 1026 NE Madison, 1026 NE Monroe, 1031 NE Monroe and 1101 NE; all sites are currently vacant residential parcels. The developer is aware of the historic significance of the area and has worked with its architectural firm with the goal of producing a preliminary design that is historically consistent with the area and the particular block of development.

Please refer to the attached map and design documents for more detailed information.

DISCUSSION:
The Commission is asked to consider the criteria in 36 CFR 800.5(a) when commenting on whether or not the project would cause an adverse effect on the historic properties in the APE.

OPTIONS:
Make comments to be taken into consideration in the City’s determination of effect.
Habitat Proposal 2018

Packet Includes:

- Map of Area of Potential Effect For purposes of Section 106 Review with Build Sites
- GIS Map of Build Sites
- Images of Existing Housing Surrounding Build Sites
- Elevations for Each Proposed Build
- Governing Regulations for the Section 106 Review Process in Full
Area of Potential Effect
2.1 Neighborhood Characteristics

**1,000 Block NE Monroe**

![910 NE Monroe](image)

![1005-1003 NE Monroe](image)

![1007 NE Monroe](image)
2.1 Neighborhood Characteristics

1008 NE Monroe

1012 NE Monroe

1014 NE Monroe
2.1 Neighborhood Characteristics

1018 NE Monroe

1028 NE Monroe

1,100 Block NE Monroe

1100 NE Monroe
2.1 Neighborhood Characteristics
2.1 Neighborhood Characteristics

NE Madison

1025 NE Madison

Empty lot to the right of 1025 which will become 1029
2.1 Neighborhood Characteristics

1024 NE Madison

1026 NE Madison empty lot to the left of 1024
2.1 Neighborhood Characteristics

![Image of 1101 NE Madison Empty Lot]
1101 NE Madison - Proposed Elevation
§800.1 Purposes.

(a) *Purposes of the section 106 process.* Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties and afford the Council a reasonable opportunity to comment on such undertakings. The procedures in this part define how Federal agencies meet these statutory responsibilities. The section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties.

(b) *Relation to other provisions of the act.* Section 106 is related to other provisions of the act designed to further the national policy of historic preservation. References to those provisions are included in this part to identify circumstances where they may affect actions taken to meet section 106 requirements. Such provisions may have their own implementing
§800.2 Participants in the Section 106 process.

(a) Agency official. It is the statutory obligation of the Federal agency to fulfill the requirements of section 106 and to ensure that an agency official with jurisdiction over an undertaking takes legal and financial responsibility for section 106 compliance in accordance with subpart B of this part. The agency official has approval authority for the undertaking and can commit the Federal agency to take appropriate action for a specific undertaking as a result of section 106 compliance. For the purposes of subpart C of this part, the agency official has the authority to commit the Federal agency to any obligation it may assume in the implementation of a program alternative. The agency official may be a State, local, or tribal government official who has been delegated legal responsibility for compliance with section 106 in accordance with Federal law.

(1) Professional standards. Section 112(a)(1)(A) of the act requires each Federal agency responsible for the protection of historic resources, including archeological resources, to ensure that all actions taken by employees or contractors of the agency shall meet professional standards under regulations developed by the Secretary.

(2) Lead Federal agency. If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.

(3) Use of contractors. Consistent with applicable conflict of interest laws, the agency official may use the services of applicants, consultants, or designees to prepare information, analyses and recommendations under this part. The agency official remains legally responsible for all required findings and determinations. If a document or study is prepared by a non-Federal party, the agency official is responsible for ensuring that its content meets applicable standards and guidelines.

(4) Consultation. The agency official shall involve the consulting parties described in paragraph (c) of this section in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the scale of the undertaking and the scope of Federal involvement and coordinated with other requirements of other statutes, as applicable, such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation. The Council encourages the agency official to use to the extent possible existing agency procedures and mechanisms to fulfill the consultation requirements of this part.

(b) Council. The Council issues regulations to implement section 106, provides guidance and advice on the application of the procedures in this part, and generally oversees the operation of the section 106 process. The Council also consults with and comments to agency officials on individual undertakings and programs that affect historic properties.

(1) Council entry into the section 106 process. When the Council determines that its involvement is necessary to ensure that the purposes of section 106 and the act are met, the Council may enter the section 106 process. Criteria guiding Council decisions to enter the section 106 process are found in appendix A to this part. The Council will document that the criteria have been met and notify the parties to the section 106 process as required by this part.

(2) Council assistance. Participants in the section 106 process may seek advice, guidance and assistance from the Council on the application of this part to specific undertakings, including the resolution of disagreements, whether or not the Council is formally involved in the review of the undertaking. If questions arise regarding the conduct of the section 106 process, participants are encouraged to obtain the Council's advice on completing the process.

(c) Consulting parties. The following parties have consultative roles in the section 106 process.

(1) State historic preservation officer. (i) The State historic preservation officer (SHPO) reflects the interests of the State and its citizens in the preservation of their cultural heritage. In accordance with section 101(b)(3) of the act, the
SHPO advises and assists Federal agencies in carrying out their section 106 responsibilities and cooperates with such agencies, local governments and organizations and individuals to ensure that historic properties are taking into consideration at all levels of planning and development.

(ii) If an Indian tribe has assumed the functions of the SHPO in the section 106 process for undertakings on tribal lands, the SHPO shall participate as a consulting party if the undertaking takes place on tribal lands but affects historic properties off tribal lands, if requested in accordance with §800.3(c)(1), or if the Indian tribe agrees to include the SHPO pursuant to §800.3(f)(3).

(2) Indian tribes and Native Hawaiian organizations. (i) Consultation on tribal lands. (A) Tribal historic preservation officer. For a tribe that has assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the tribal historic preservation officer (THPO) appointed or designated in accordance with the act is the official representative for the purposes of section 106. The agency official shall consult with the THPO in lieu of the SHPO regarding undertakings occurring on or affecting historic properties on tribal lands.

(B) Tribes that have not assumed SHPO functions. When an Indian tribe has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act, the agency official shall consult with a representative designated by such Indian tribe in addition to the SHPO regarding undertakings occurring on or affecting historic properties on its tribal lands. Such Indian tribes have the same rights of consultation and concurrence that the THPOs are given throughout subpart B of this part, except that such consultations shall be in addition to and on the same basis as consultation with the SHPO.

(ii) Consultation on historic properties of significance to Indian tribes and Native Hawaiian organizations. Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization shall be a consulting party.

(A) The agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects. It is the responsibility of the agency official to make a reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process. Consultation should commence early in the planning process, in order to identify and discuss relevant preservation issues and resolve concerns about the confidentiality of information on historic properties.

(B) The Federal Government has a unique legal relationship with Indian tribes set forth in the Constitution of the United States, treaties, statutes, and court decisions. Consultation with Indian tribes should be conducted in a sensitive manner respectful of tribal sovereignty. Nothing in this part alters, amends, repeals, interprets, or modifies tribal sovereignty, any treaty rights, or other rights of an Indian tribe, or preempts, modifies, or limits the exercise of any such rights.

(C) Consultation with an Indian tribe must recognize the government-to-government relationship between the Federal Government and Indian tribes. The agency official shall consult with representatives designated or identified by the tribal government or the governing body of a Native Hawaiian organization. Consultation with Indian tribes and Native Hawaiian organizations should be conducted in a manner sensitive to the concerns and needs of the Indian tribe or Native Hawaiian organization.

(D) When Indian tribes and Native Hawaiian organizations attach religious and cultural significance to historic properties off tribal lands, section 101(d)(6)(B) of the act requires Federal agencies to consult with such Indian tribes and Native Hawaiian organizations in the section 106 process. Federal agencies should be aware that frequently historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands of Indian tribes and Native Hawaiian organizations and should consider that when complying with the procedures in this part.

(E) An Indian tribe or a Native Hawaiian organization may enter into an agreement with an agency official that specifies how they will carry out responsibilities under this part, including concerns over the confidentiality of information. An agreement may cover all aspects of tribal participation in the section 106 process, provided that no modification may be made in the roles of other parties to the section 106 process without their consent. An agreement may grant the Indian tribe or Native Hawaiian organization additional rights to participate or concur in agency decisions in the section 106 process beyond those specified in subpart B of this part. The agency official shall provide a copy of any such agreement to the Council and the appropriate SHPOs.

(F) An Indian tribe that has not assumed the responsibilities of the SHPO for section 106 on tribal lands under section 101(d)(2) of the act may notify the agency official in writing that it is waiving its rights under §800.6(c)(1) to execute a memorandum of agreement.
(3) **Representatives of local governments.** A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party. Under other provisions of Federal law, the local government may be authorized to act as the agency official for purposes of section 106.

(4) **Applicants for Federal assistance, permits, licenses, and other approvals.** An applicant for Federal assistance or for a Federal permit, license, or other approval is entitled to participate as a consulting party as defined in this part. The agency official may authorize an applicant or group of applicants to initiate consultation with the SHPO/THPO and others, but remains legally responsible for all findings and determinations charged to the agency official. The agency official shall notify the SHPO/THPO when an applicant or group of applicants is so authorized. A Federal agency may authorize all applicants in a specific program pursuant to this section by providing notice to all SHPO/THPOs. Federal agencies that provide authorizations to applicants remain responsible for their government-to-government relationships with Indian tribes.

(5) **Additional consulting parties.** Certain individuals and organizations with a demonstrated interest in the undertaking may participate as consulting parties due to the nature of their legal or economic relation to the undertaking or affected properties, or their concern with the undertaking's effects on historic properties.

(d) **The public**—(1) **Nature of involvement.** The views of the public are essential to informed Federal decisionmaking in the section 106 process. The agency official shall seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, the likely interest of the public in the effects on historic properties, confidentiality concerns of private individuals and businesses, and the relationship of the Federal involvement to the undertaking.

(2) **Providing notice and information.** The agency official must, except where appropriate to protect confidentiality concerns of affected parties, provide the public with information about an undertaking and its effects on historic properties and seek public comment and input. Members of the public may also provide views on their own initiative for the agency official to consider in decisionmaking.

(3) **Use of agency procedures.** The agency official may use the agency's procedures for public involvement under the National Environmental Policy Act or other program requirements in lieu of public involvement requirements in subpart B of this part, if they provide adequate opportunities for public involvement consistent with this subpart.

Subpart B—The section 106 Process

§800.3 Initiation of the section 106 process.

(a) **Establish undertaking.** The agency official shall determine whether the proposed Federal action is an undertaking as defined in §800.16(y) and, if so, whether it is a type of activity that has the potential to cause effects on historic properties.

(1) **No potential to cause effects.** If the undertaking is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present, the agency official has no further obligations under section 106 or this part.

(2) **Program alternatives.** If the review of the undertaking is governed by a Federal agency program alternative established under §800.14 or a programmatic agreement in existence before January 11, 2001, the agency official shall follow the program alternative.

(b) **Coordinate with other reviews.** The agency official should coordinate the steps of the section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under other authorities such as the National Environmental Policy Act, the Native American Graves Protection and Repatriation Act, the American Indian Religious Freedom Act, the Archeological Resources Protection Act, and agency-specific legislation, such as section 4(f) of the Department of Transportation Act. Where consistent with the procedures in this subpart, the agency official may use information developed for other reviews under Federal, State, or tribal law to meet the requirements of section 106.

(c) **Identify the appropriate SHPO and/or THPO.** As part of its initial planning, the agency official shall determine the appropriate SHPO or SHPOs to be involved in the section 106 process. The agency official shall also determine whether the undertaking may occur on or affect historic properties on any tribal lands and, if so, whether a THPO has assumed the duties of the SHPO. The agency official shall then initiate consultation with the appropriate officer or officers.

(1) **Tribal assumption of SHPO responsibilities.** Where an Indian tribe has assumed the section 106 responsibilities of the SHPO on tribal lands pursuant to section 101(d)(2) of the act, consultation for undertakings occurring on tribal land or for effects on tribal land is with the THPO for the Indian tribe in lieu of the SHPO. Section 101(d)(2)(D)(iii) of the act
§800.4 Identification of historic properties.

(a) Determine scope of identification efforts. In consultation with the SHPO/THPO, the agency official shall:

(1) Determine and document the area of potential effects, as defined in §800.16(d);

(2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified;

(3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues relating to the undertaking's potential effects on historic properties; and

(4) Gather information from any Indian tribe or Native Hawaiian organization identified pursuant to §800.3(f) to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognizing that an Indian tribe or Native Hawaiian organization may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The agency official should address concerns raised about confidentiality pursuant to §800.11(c).
(b) **Identify historic properties.** Based on the information gathered under paragraph (a) of this section, and in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects.

1. **Level of effort.** The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. The agency official shall take into account past planning, research and studies, the magnitude and nature of the undertaking and the degree of Federal involvement, the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within the area of potential effects. The Secretary's standards and guidelines for identification provide guidance on this subject. The agency official should also consider other applicable professional, State, tribal, and local laws, standards, and guidelines. The agency official shall take into account any confidentiality concerns raised by Indian tribes or Native Hawaiian organizations during the identification process.

2. **Phased identification and evaluation.** Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process to conduct identification and evaluation efforts. The agency official may also defer final identification and evaluation of historic properties if it is specifically provided for in a memorandum of agreement executed pursuant to §800.6, a programmatic agreement executed pursuant to §800.14(b), or the documents used by an agency official to comply with the National Environmental Policy Act pursuant to §800.8. The process should establish the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation, taking into account the number of alternatives under consideration, the magnitude of the undertaking and its likely effects, and the views of the SHPO/THPO and any other consulting parties. As specific aspects or locations of an alternative are refined or access is gained, the agency official shall proceed with the identification and evaluation of historic properties in accordance with paragraphs (b)(1) and (c) of this section.

3. **Evaluate historic significance.** (1) **Apply National Register criteria.** In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified properties and guided by the Secretary's standards and guidelines for evaluation, the agency official shall apply the National Register criteria (36 CFR part 63) to properties identified within the area of potential effects that have not been previously evaluated for National Register eligibility. The passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible. The agency official shall acknowledge that Indian tribes and Native Hawaiian organizations possess special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them.

4. **Determine whether a property is eligible.** If the agency official determines any of the National Register criteria are met and the SHPO/THPO agrees, the property shall be considered eligible for the National Register for section 106 purposes. If the agency official determines the criteria are not met and the SHPO/THPO agrees, the property shall be considered not eligible. If the agency official and the SHPO/THPO do not agree, or if the Council or the Secretary so request, the agency official shall obtain a determination of eligibility from the Secretary pursuant to 36 CFR part 63. If an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to a property on tribal lands does not agree, it may ask the Council to request the agency official to obtain a determination of eligibility.

5. **Results of identification and evaluation.** (1) **No historic properties affected.** If the agency official finds that either there are no historic properties present or there are historic properties present but the undertaking will have no effect upon them as defined in §800.16(i), the agency official shall provide documentation of this finding, as set forth in §800.11(d), to the SHPO/THPO. The agency official shall notify all consulting parties, including Indian tribes and Native Hawaiian organizations, and make the documentation available for public inspection prior to approving the undertaking.

6. **I**f the SHPO/THPO, or the Council if it has entered the section 106 process, does not object within 30 days of receipt of an adequately documented finding, the agency official's responsibilities under section 106 are fulfilled.

7. **II**f the SHPO/THPO objects within 30 days of receipt of an adequately documented finding, the agency official shall either consult with the objecting party to resolve the disagreement, or forward the finding and supporting documentation to the Council and request that the Council review the finding pursuant to paragraphs (d)(1)(iv)(A) through (d)(1)(iv)(C) of this section. When an agency official forwards such requests for review to the Council, the agency official shall concurrently notify all consulting parties that such a request has been made and make the request documentation available to the public.

8. **III** During the SHPO/THPO 30 day review period, the Council may object to the finding and provide its opinion regarding the finding to the agency official and, if the Council determines the issue warrants it, the head of the agency. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The agency shall then proceed according to paragraphs (d)(1)(iv)(B) and (d)(1)(iv)(C) of this section.

9. **IV** (A) Upon receipt of the request under paragraph (d)(1)(ii) of this section, the Council will have 30 days in which to review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the
agency with the Council's opinion regarding the finding. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. If the Council does not respond within 30 days of receipt of the request, the agency official's responsibilities under section 106 are fulfilled.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion before the agency reaches a final decision on the finding.

(C) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall then prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial agency finding of no historic properties affected, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

(D) The Council shall retain a record of agency responses to Council opinions on their findings of no historic properties affected. The Council shall make this information available to the public.

(2) Historic properties affected. If the agency official finds that there are historic properties which may be affected by the undertaking, the agency official shall notify all consulting parties, including Indian tribes or Native Hawaiian organizations, invite their views on the effects and assess adverse effects, if any, in accordance with §800.5.


§800.5 Assessment of adverse effects.

(a) Apply criteria of adverse effect. In consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to identified historic properties, the agency official shall apply the criteria of adverse effect to historic properties within the area of potential effects. The agency official shall consider any views concerning such effects which have been provided by consulting parties and the public.

(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.

(2) Examples of adverse effects. Adverse effects on historic properties include, but are not limited to:

(i) Physical destruction of or damage to all or part of the property;

(ii) Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation, and provision of handicapped access, that is not consistent with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines;

(iii) Removal of the property from its historic location;

(iv) Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance;

(v) Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features;

(vi) Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization; and

(vii) Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

(3) Phased application of criteria. Where alternatives under consideration consist of corridors or large land areas, or where access to properties is restricted, the agency official may use a phased process in applying the criteria of adverse effect consistent with phased identification and evaluation efforts conducted pursuant to §800.4(b)(2).

(b) Finding of no adverse effect. The agency official, in consultation with the SHPO/THPO, may propose a finding of
no adverse effect when the undertaking's effects do not meet the criteria of paragraph (a)(1) of this section or the undertaking is modified or conditions are imposed, such as the subsequent review of plans for rehabilitation by the SHPO/THPO to ensure consistency with the Secretary's standards for the treatment of historic properties (36 CFR part 68) and applicable guidelines, to avoid adverse effects.

(c) Consulting party review. If the agency official proposes a finding of no adverse effect, the agency official shall notify all consulting parties of the finding and provide them with the documentation specified in §800.11(e). The SHPO/THPO shall have 30 days from receipt to review the finding.

(1) Agreement, or no objection to, finding. Unless the Council is reviewing the finding pursuant to paragraph (c)(3) of this section, the agency official may proceed after the close of the 30 day review period if the SHPO/THPO has agreed with the finding or has not provided a response, and no consulting party has objected. The agency official shall then carry out the undertaking in accordance with paragraph (d)(1) of this section.

(2) Disagreement with finding. (i) If within the 30 day review period the SHPO/THPO or any consulting party notifies the agency official in writing that it disagrees with the finding and specifies the reasons for the disagreement in the notification, the agency official shall either consult with the party to resolve the disagreement, or request the Council to review the finding pursuant to paragraphs (c)(3)(i) and (c)(3)(ii) of this section. The agency official shall include with such request the documentation specified in §800.11(e). The agency official shall also concurrently notify all consulting parties that such a submission has been made and make the submission documentation available to the public.

(ii) If within the 30 day review period the Council provides the agency official and, if the Council determines the issue warrants it, the head of the agency, with a written opinion objecting to the finding, the agency shall then proceed according to paragraph (c)(3)(ii) of this section. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part.

(iii) The agency official should seek the concurrence of any Indian tribe or Native Hawaiian organization that has made known to the agency official that it attaches religious and cultural significance to a historic property subject to the finding. If such Indian tribe or Native Hawaiian organization disagrees with the finding, it may within the 30 day review period specify the reasons for disagreeing with the finding and request the Council to review and object to the finding pursuant to paragraph (c)(2)(ii) of this section.

(3) Council review of findings. (i) When a finding is submitted to the Council pursuant to paragraph (c)(2)(i) of this section, the Council shall review the finding and provide the agency official and, if the Council determines the issue warrants it, the head of the agency with its opinion as to whether the adverse effect criteria have been correctly applied. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The Council will provide its opinion within 15 days of receiving the documented finding from the agency official. The Council at its discretion may extend that time period for 15 days, in which case it shall notify the agency of such extension prior to the end of the initial 15 day period. If the Council does not respond within the applicable time period, the agency official's responsibilities under section 106 are fulfilled.

(ii)(A) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the finding.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council, the SHPO/THPO, and the consulting parties. The head of the agency may delegate his or her duties under this paragraph to the agency's senior policy official. If the agency official's initial finding will be revised, the agency official shall proceed in accordance with the revised finding. If the final decision of the agency is to affirm the initial finding of no adverse effect, once the summary of the decision has been sent to the Council, the SHPO/THPO, and the consulting parties, the agency official's responsibilities under section 106 are fulfilled.

(C) The Council shall retain a record of agency responses to Council opinions on their findings of no adverse effects. The Council shall make this information available to the public.

(d) Results of assessment—(1) No adverse effect. The agency official shall maintain a record of the finding and provide information on the finding to the public on request, consistent with the confidentiality provisions of §800.11(c). Implementation of the undertaking in accordance with the finding as documented fulfills the agency official's responsibilities under section 106 and this part. If the agency official will not conduct the undertaking as proposed in the finding, the agency official shall reopen consultation under paragraph (a) of this section.

(2) Adverse effect. If an adverse effect is found, the agency official shall consult further to resolve the adverse effect pursuant to §800.6.

§800.6 Resolution of adverse effects.

(a) Continue consultation. The agency official shall consult with the SHPO/THPO and other consulting parties, including Indian tribes and Native Hawaiian organizations, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties.

(1) Notify the Council and determine Council participation. The agency official shall notify the Council of the adverse effect finding by providing the documentation specified in §800.11(e).

(i) The notice shall invite the Council to participate in the consultation when:

(A) The agency official wants the Council to participate;

(B) The undertaking has an adverse effect upon a National Historic Landmark; or

(C) A programmatic agreement under §800.14(b) will be prepared;

(ii) The SHPO/THPO, an Indian tribe or Native Hawaiian organization, or any other consulting party may at any time independently request the Council to participate in the consultation.

(iii) The Council shall advise the agency official and all consulting parties whether it will participate within 15 days of receipt of notice or other request. Prior to entering the process, the Council shall provide written notice to the agency official and the consulting parties that its decision to participate meets the criteria set forth in appendix A to this part. The Council shall also advise the head of the agency of its decision to enter the process. Consultation with Council participation is conducted in accordance with paragraph (b)(2) of this section.

(iv) If the Council does not join the consultation, the agency official shall proceed with consultation in accordance with paragraph (b)(1) of this section.

(b) Resolve adverse effects—(1) Resolution without the Council. In addition to the consulting parties identified under §800.3(f), the agency official, the SHPO/THPO and the Council, if participating, may agree to invite other individuals or organizations to become consulting parties. The agency official shall invite any individual or organization that will assume a specific role or responsibility in a memorandum of agreement to participate as a consulting party.

(2) Provide documentation. The agency official shall provide to all consulting parties the documentation specified in §800.11(e), subject to the confidentiality provisions of §800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects.

(3) Involve the public. The agency official shall make information available to the public, including the documentation specified in §800.11(e), subject to the confidentiality provisions of §800.11(c), and such other documentation as may be developed during the consultation to resolve adverse effects.

(4) Resolve adverse effects—(1) Resolution without the Council. (i) The agency official shall consult with the SHPO/THPO and other consulting parties to seek ways to avoid, minimize or mitigate the adverse effects.

(ii) The agency official may use standard treatments established by the Council under §800.14(d) as a basis for a memorandum of agreement.

(iii) If the Council decides to join the consultation, the agency official shall follow paragraph (b)(2) of this section.

(iv) If the agency official and the SHPO/THPO agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement. The agency official must submit a copy of the executed memorandum of agreement, along with the documentation specified in §800.11(f), to the Council prior to approving the undertaking in order to meet the requirements of section 106 and this subpart.

(v) If the agency official, and the SHPO/THPO fail to agree on the terms of a memorandum of agreement, the agency official shall request the Council to join the consultation and provide the Council with the documentation set forth in
§800.11(g). If the Council decides to join the consultation, the agency official shall proceed in accordance with paragraph (b)(2) of this section. If the Council decides not to join the consultation, the Council will notify the agency and proceed to comment in accordance with §800.7(c).

(2) Resolution with Council participation. If the Council decides to participate in the consultation, the agency official shall consult with the SHPO/THPO, the Council, and other consulting parties, including Indian tribes and Native Hawaiian organizations under §800.2(c)(3), to seek ways to avoid, minimize or mitigate the adverse effects. If the agency official, the SHPO/THPO, and the Council agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement.

(c) Memorandum of agreement. A memorandum of agreement executed and implemented pursuant to this section evidences the agency official's compliance with section 106 and this part and shall govern the undertaking and all of its parts. The agency official shall ensure that the undertaking is carried out in accordance with the memorandum of agreement.

(1) Signatories. The signatories have sole authority to execute, amend or terminate the agreement in accordance with this subpart.

(i) The agency official and the SHPO/THPO are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(1) of this section.

(ii) The agency official, the SHPO/THPO, and the Council are the signatories to a memorandum of agreement executed pursuant to paragraph (b)(2) of this section.

(iii) The agency official and the Council are signatories to a memorandum of agreement executed pursuant to §800.7(a)(2).

(2) Invited signatories. (i) The agency official may invite additional parties to be signatories to a memorandum of agreement. Any such party that signs the memorandum of agreement shall have the same rights with regard to seeking amendment or termination of the memorandum of agreement as other signatories.

(ii) The agency official may invite an Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties located off tribal lands to be a signatory to a memorandum of agreement concerning such properties.

(iii) The agency official should invite any party that assumes a responsibility under a memorandum of agreement to be a signatory.

(iv) The refusal of any party invited to become a signatory to a memorandum of agreement pursuant to paragraph (c)(2) of this section does not invalidate the memorandum of agreement.

(3) Concurrence by others. The agency official may invite all consulting parties to concur in the memorandum of agreement. The signatories may agree to invite others to concur. The refusal of any party invited to concur in the memorandum of agreement does not invalidate the memorandum of agreement.

(4) Reports on implementation. Where the signatories agree it is appropriate, a memorandum of agreement shall include a provision for monitoring and reporting on its implementation.

(5) Duration. A memorandum of agreement shall include provisions for termination and for reconsideration of terms if the undertaking has not been implemented within a specified time.

(6) Discoveries. Where the signatories agree it is appropriate, a memorandum of agreement shall include provisions to deal with the subsequent discovery or identification of additional historic properties affected by the undertaking.

(7) Amendments. The signatories to a memorandum of agreement may amend it. If the Council was not a signatory to the original agreement and the signatories execute an amended agreement, the agency official shall file it with the Council.

(8) Termination. If any signatory determines that the terms of a memorandum of agreement cannot be or are not being carried out, the signatories shall consult to seek amendment of the agreement. If the agreement is not amended, any signatory may terminate it. The agency official shall either execute a memorandum of agreement with signatories under paragraph (c)(1) of this section or request the comments of the Council under §800.7(a).

(9) Copies. The agency official shall provide each consulting party with a copy of any memorandum of agreement executed pursuant to this subpart.

§800.7 Failure to resolve adverse effects.
(a) Termination of consultation. After consulting to resolve adverse effects pursuant to §800.6(b)(2), the agency official, the SHPO/THPO, or the Council may determine that further consultation will not be productive and terminate consultation. Any party that terminates consultation shall notify the other consulting parties and provide them the reasons for terminating in writing.

(1) If the agency official terminates consultation, the head of the agency or an Assistant Secretary or other officer with major department-wide or agency-wide responsibilities shall request that the Council comment pursuant to paragraph (c) of this section and shall notify all consulting parties of the request.

(2) If the SHPO terminates consultation, the agency official and the Council may execute a memorandum of agreement without the SHPO's involvement.

(3) If a THPO terminates consultation regarding an undertaking occurring on or affecting historic properties on its tribal lands, the Council shall comment pursuant to paragraph (c) of this section.

(4) If the Council terminates consultation, the Council shall notify the agency official, the agency's Federal preservation officer and all consulting parties of the termination and comment under paragraph (c) of this section. The Council may consult with the agency's Federal preservation officer prior to terminating consultation to seek to resolve issues concerning the undertaking and its effects on historic properties.

(b) Comments without termination. The Council may determine that it is appropriate to provide additional advisory comments upon an undertaking for which a memorandum of agreement will be executed. The Council shall provide them to the agency official when it executes the memorandum of agreement.

(c) Comments by the Council.—(1) Preparation. The Council shall provide an opportunity for the agency official, all consulting parties, and the public to provide their views within the time frame for developing its comments. Upon request of the Council, the agency official shall provide additional existing information concerning the undertaking and assist the Council in arranging an onsite inspection and an opportunity for public participation.

(2) Timing. The Council shall transmit its comments within 45 days of receipt of a request under paragraph (a)(1) or (a)(3) of this section or §800.8(c)(3), or termination by the Council under §800.6(b)(1)(v) or paragraph (a)(4) of this section, unless otherwise agreed to by the agency official.

(3) Transmittal. The Council shall provide its comments to the head of the agency requesting comment with copies to the agency official, the agency's Federal preservation officer, all consulting parties, and others as appropriate.

(4) Response to Council comment. The head of the agency shall take into account the Council's comments in reaching a final decision on the undertaking. Section 110(l) of the act directs that the head of the agency shall document this decision and may not delegate his or her responsibilities pursuant to section 106. Documenting the agency head's decision shall include:

(i) Preparing a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's comments and providing it to the Council prior to approval of the undertaking;

(ii) Providing a copy of the summary to all consulting parties; and

(iii) Notifying the public and making the record available for public inspection.

§800.8 Coordination With the National Environmental Policy Act.

(a) General principles.—(1) Early coordination. Federal agencies are encouraged to coordinate compliance with section 106 and the procedures in this part with any steps taken to meet the requirements of the National Environmental Policy Act (NEPA). Agencies should consider their section 106 responsibilities as early as possible in the NEPA process, and plan their public participation, analysis, and review in such a way that they can meet the purposes and requirements of both statutes in a timely and efficient manner. The determination of whether an undertaking is a "major Federal action significantly affecting the quality of the human environment," and therefore requires preparation of an environmental impact statement (EIS) under NEPA, should include consideration of the undertaking's likely effects on historic properties. A finding of adverse effect on a historic property does not necessarily require an EIS under NEPA.

(2) Consulting party roles. SHPO/THPOs, Indian tribes, and Native Hawaiian organizations, other consulting parties, and organizations and individuals who may be concerned with the possible effects of an agency action on historic properties should be prepared to consult with agencies early in the NEPA process, when the purpose of and need for the proposed action as well as the widest possible range of alternatives are under consideration.

(3) Inclusion of historic preservation issues. Agency officials should ensure that preparation of an environmental assessment (EA) and finding of no significant impact (FONSI) or an EIS and record of decision (ROD) includes
appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.

(b) Actions categorically excluded under NEPA. If a project, activity or program is categorically excluded from NEPA review under an agency's NEPA procedures, the agency official shall determine if it still qualifies as an undertaking requiring review under section 106 pursuant to §800.3(a). If so, the agency official shall proceed with section 106 review in accordance with the procedures in this subpart.

(c) Use of the NEPA process for section 106 purposes. An agency official may use the process and documentation required for the preparation of an EA/FONSI or an EIS/ROD to comply with section 106 in lieu of the procedures set forth in §§800.3 through 800.6 if the agency official has notified in advance the SHPO/THPO and the Council that it intends to do so and the following standards are met.

(1) Standards for developing environmental documents to comply with Section 106. During preparation of the EA or draft EIS (DEIS) the agency official shall:

(i) Identify consulting parties either pursuant to §800.3(f) or through the NEPA scoping process with results consistent with §800.3(f);

(ii) Identify historic properties and assess the effects of the undertaking on such properties in a manner consistent with the standards and criteria of §§800.4 through 800.5, provided that the scope and timing of these steps may be phased to reflect the agency official's consideration of project alternatives in the NEPA process and the effort is commensurate with the assessment of other environmental factors;

(iii) Consult regarding the effects of the undertaking on historic properties with the SHPO/THPO, Indian tribes, and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, other consulting parties, and the Council, where appropriate, during NEPA scoping, environmental analysis, and the preparation of NEPA documents;

(iv) Involve the public in accordance with the agency's published NEPA procedures; and (v) Develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA or DEIS.

(2) Review of environmental documents. (i) The agency official shall submit the EA, DEIS, or EIS to the SHPO/THPO, Indian tribes, and Native Hawaiian organizations that might attach religious and cultural significance to affected historic properties, and other consulting parties prior to or when making the document available for public comment. If the document being prepared is a DEIS or EIS, the agency official shall also submit it to the Council.

(ii) Prior to or within the time allowed for public comment on the document, a SHPO/THPO, an Indian tribe or Native Hawaiian organization, another consulting party or the Council may object to the agency official that preparation of the EA, DEIS, or EIS has not met the standards set forth in paragraph (c)(1) of this section or that the substantive resolution of the effects on historic properties proposed in an EA, DEIS, or EIS is inadequate. If the agency official receives such an objection, the agency official shall refer the matter to the Council.

(3) Resolution of objections. Within 30 days of the agency official's referral of an objection under paragraph (c)(2)(ii) of this section, the Council shall review the objection and notify the agency as to its opinion on the objection.

(i) If the Council agrees with the objection:

(A) The Council shall provide the agency official and, if the Council determines the issue warrants it, the head of the agency with the Council's opinion regarding the objection. A Council decision to provide its opinion to the head of an agency shall be guided by the criteria in appendix A to this part. The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall take into account the Council's opinion in reaching a final decision on the issue of the objection.

(B) The person to whom the Council addresses its opinion (the agency official or the head of the agency) shall prepare a summary of the decision that contains the rationale for the decision and evidence of consideration of the Council's opinion, and provide it to the Council. The head of the agency may delegate his or her duties under this paragraph to the agency's senior Policy Official. If the agency official's initial decision regarding the matter that is the subject of the objection will be revised, the agency official shall proceed in accordance with the revised decision. If the final decision of the agency is to affirm the initial agency decision, once the summary of the final decision has been sent to the Council, the agency official shall continue its compliance with this section.

(ii) If the Council disagrees with the objection, the Council shall so notify the agency official, in which case the agency official shall continue its compliance with this section.

(iii) If the Council fails to respond to the objection within the 30 day period, the agency official shall continue its compliance with this section.
(4) Approval of the undertaking. If the agency official has found, during the preparation of an EA or EIS that the effects of an undertaking on historic properties are adverse, the agency official shall develop measures in the EA, DEIS, or EIS to avoid, minimize, or mitigate such effects in accordance with paragraph (c)(1)(v) of this section. The agency official's responsibilities under section 106 and the procedures in this subpart shall then be satisfied when either:

(i) A binding commitment to such proposed measures is incorporated in:

(A) The ROD, if such measures were proposed in a DEIS or EIS; or

(B) An MOA drafted in compliance with §800.6(c); or

(ii) The Council has commented under §800.7 and received the agency's response to such comments.

(5) Modification of the undertaking. If the undertaking is modified after approval of the FONSI or the ROD in a manner that changes the undertaking or alters its effects on historic properties, or if the agency official fails to ensure that the measures to avoid, minimize or mitigate adverse effects (as specified in either the FONSI or the ROD, or in the binding commitment adopted pursuant to paragraph (c)(4) of this section) are carried out, the agency official shall notify the Council and all consulting parties that supplemental environmental documents will be prepared in compliance with NEPA or that the procedures in §§800.3 through 800.6 will be followed as necessary.


§800.9 Council review of section 106 compliance.

(a) Assessment of agency official compliance for individual undertakings. The Council may provide to the agency official its advisory opinion regarding the substance of any finding, determination or decision regarding the adequacy of the agency official's compliance with the procedures under this part. The Council may provide such advice at any time at the request of any individual, agency or organization or on its own initiative. The agency official shall consider the views of the Council in reaching a decision on the matter in question.

(b) Agency foreclosure of the Council's opportunity to comment. Where an agency official has failed to complete the requirements of section 106 in accordance with the procedures in this part prior to the approval of an undertaking, the Council's opportunity to comment may be foreclosed. The Council may review a case to determine whether a foreclosure has occurred. The Council shall notify the agency official and the agency's Federal preservation officer and allow 30 days for the agency official to provide information as to whether foreclosure has occurred. If the Council determines foreclosure has occurred, the Council shall transmit the determination to the agency official and the head of the agency. The Council shall also make the determination available to the public and any parties known to be interested in the undertaking and its effects upon historic properties.

(c) Intentional adverse effects by applicants—(1) Agency responsibility. Section 110(k) of the act prohibits a Federal agency from granting 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, has allowed such significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Guidance issued by the Secretary pursuant to section 110 of the act governs its implementation.

(2) Consultation with the Council. When an agency official determines, based on the actions of an applicant, that section 110(k) is applicable and that circumstances may justify granting the assistance, the agency official shall notify the Council and provide documentation specifying the circumstances under which the adverse effects to the historic property occurred and the degree of damage to the integrity of the property. This documentation shall include any views obtained from the applicant, SHPO/THPO, an Indian tribe if the undertaking occurs on or affects historic properties on tribal lands, and other parties known to be interested in the undertaking.

(i) Within thirty days of receiving the agency official's notification, unless otherwise agreed to by the agency official, the Council shall provide the agency official with its opinion as to whether circumstances justify granting assistance to the applicant and any possible mitigation of the adverse effects.

(ii) The agency official shall consider the Council's opinion in making a decision on whether to grant assistance to the applicant, and shall notify the Council, the SHPO/THPO, and other parties known to be interested in the undertaking prior to granting the assistance.

(3) Compliance with Section 106. If an agency official, after consulting with the Council, determines to grant the assistance, the agency official shall comply with §§800.3 through 800.6 to take into account the effects of the undertaking on any historic properties.
(d) **Evaluation of Section 106 operations.** The Council may evaluate the operation of the section 106 process by periodic reviews of how participants have fulfilled their legal responsibilities and how effectively the outcomes reached advance the purposes of the act.

1) **Information from participants.** Section 203 of the act authorizes the Council to obtain information from Federal agencies necessary to conduct evaluation of the section 106 process. The agency official shall make documentation of agency policies, operating procedures and actions taken to comply with section 106 available to the Council upon request. The Council may request available information and documentation from other participants in the section 106 process.

2) **Improving the operation of section 106.** Based upon any evaluation of the section 106 process, the Council may make recommendations to participants, the heads of Federal agencies, and the Secretary of actions to improve the efficiency and effectiveness of the process. Where the Council determines that an agency official or a SHPO/THPO has failed to properly carry out the responsibilities assigned under the process in this part, the Council may participate in individual case reviews conducted under such process in addition to the SHPO/THPO for such period that it determines is necessary to improve performance or correct deficiencies. If the Council finds a pattern of failure by a Federal agency in carrying out its responsibilities under section 106, the Council may review the policies and programs of the agency related to historic preservation pursuant to section 202(a)(6) of the act and recommend methods to improve the effectiveness, coordination, and consistency of those policies and programs with section 106.

§800.10 **Special requirements for protecting National Historic Landmarks.**

(a) **Statutory requirement.** Section 110(f) of the act requires that the agency official, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to any National Historic Landmark that may be directly and adversely affected by an undertaking. When commenting on such undertakings, the Council shall use the process set forth in §§800.6 through 800.7 and give special consideration to protecting National Historic Landmarks as specified in this section.

(b) **Resolution of adverse effects.** The agency official shall request the Council to participate in any consultation to resolve adverse effects on National Historic Landmarks conducted under §800.6.

(c) **Involvement of the Secretary.** The agency official shall notify the Secretary of any consultation involving a National Historic Landmark and invite the Secretary to participate in the consultation where there may be an adverse effect. The Council may request a report from the Secretary under section 213 of the act to assist in the consultation.

(d) **Report of outcome.** When the Council participates in consultation under this section, it shall report the outcome of the section 106 process, providing its written comments or any memoranda of agreement to which it is a signatory, to the Secretary and the head of the agency responsible for the undertaking.

§800.11 **Documentation standards.**

(a) **Adequacy of documentation.** The agency official shall ensure that a determination, finding, or agreement under the procedures in this subpart is supported by sufficient documentation to enable any reviewing parties to understand its basis. The agency official shall provide such documentation to the extent permitted by law and within available funds. When an agency official is conducting phased identification or evaluation under this subpart, the documentation standards regarding description of historic properties may be applied flexibly. If the Council, or the SHPO/THPO when the Council is not involved, determines the applicable documentation standards are not met, the Council or the SHPO/THPO, as appropriate, shall notify the agency official and specify the information needed to meet the standard. At the request of the agency official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the agency official and the consulting parties.

(b) **Format.** The agency official may use documentation prepared to comply with other laws to fulfill the requirements of the procedures in this subpart, if that documentation meets the standards of this section.

(c) **Confidentiality—(1) Authority to withhold information.** Section 304 of the act provides that the head of a Federal agency or other public official receiving grant assistance pursuant to the act, after consultation with the Secretary, shall withhold from public disclosure information about the location, character, or ownership of a historic property when disclosure may cause a significant invasion of privacy; risk harm to the historic property; or impede the use of a traditional religious site by practitioners. When the head of a Federal agency or other public official has determined that information should be withheld from the public pursuant to these criteria, the Secretary, in consultation with such Federal agency head or official, shall determine who may have access to the information for the purposes of carrying out the act.

(2) **Consultation with the Council.** When the information in question has been developed in the course of an agency's compliance with this part, the Secretary shall consult with the Council in reaching determinations on the withholding and release of information. The Federal agency shall provide the Council with available information, including views of the
SHPO/THPO, Indian tribes and Native Hawaiian organizations, related to the confidentiality concern. The Council shall advise the Secretary and the Federal agency within 30 days of receipt of adequate documentation.

(3) Other authorities affecting confidentiality. Other Federal laws and program requirements may limit public access to information concerning an undertaking and its effects on historic properties. Where applicable, those authorities shall govern public access to information developed in the section 106 process and may authorize the agency official to protect the privacy of non-governmental applicants.

(d) Finding of no historic properties affected. Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, drawings, as necessary;

(2) A description of the steps taken to identify historic properties, including, as appropriate, efforts to seek information pursuant to §800.4(b); and

(3) The basis for determining that no historic properties are present or affected.

(e) Finding of no adverse effect or adverse effect. Documentation shall include:

(1) A description of the undertaking, specifying the Federal involvement, and its area of potential effects, including photographs, maps, and drawings, as necessary;

(2) A description of the steps taken to identify historic properties;

(3) A description of the affected historic properties, including information on the characteristics that qualify them for the National Register;

(4) A description of the undertaking's effects on historic properties;

(5) An explanation of why the criteria of adverse effect were found applicable or inapplicable, including any conditions or future actions to avoid, minimize or mitigate adverse effects; and

(6) Copies or summaries of any views provided by consulting parties and the public.

(f) Memorandum of agreement. When a memorandum of agreement is filed with the Council, the documentation shall include, any substantive revisions or additions to the documentation provided the Council pursuant to §800.6(a)(1), an evaluation of any measures considered to avoid or minimize the undertaking's adverse effects and a summary of the views of consulting parties and the public.

(g) Requests for comment without a memorandum of agreement. Documentation shall include:

(1) A description and evaluation of any alternatives or mitigation measures that the agency official proposes to resolve the undertaking's adverse effects;

(2) A description of any reasonable alternatives or mitigation measures that were considered but not chosen, and the reasons for their rejection;

(3) Copies or summaries of any views submitted to the agency official concerning the adverse effects of the undertaking on historic properties and alternatives to reduce or avoid those effects; and

(4) Any substantive revisions or additions to the documentation provided the Council pursuant to §800.6(a)(1).

§800.12 Emergency situations.

(a) Agency procedures. The agency official, in consultation with the appropriate SHPOs/THPOs, affected Indian tribes and Native Hawaiian organizations, and the Council, is encouraged to develop procedures for taking historic properties into account during operations which respond to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or which respond to other immediate threats to life or property. If approved by the Council, the procedures shall govern the agency's historic preservation responsibilities during any disaster or emergency in lieu of §§800.3 through 800.6.

(b) Alternatives to agency procedures. In the event an agency official proposes an emergency undertaking as an essential and immediate response to a disaster or emergency declared by the President, a tribal government, or the Governor of a State or another immediate threat to life or property, and the agency has not developed procedures pursuant to paragraph (a) of this section, the agency official may comply with section 106 by:
(1) Following a programmatic agreement developed pursuant to §800.14(b) that contains specific provisions for dealing with historic properties in emergency situations; or

(2) Notifying the Council, the appropriate SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious and cultural significance to historic properties likely to be affected prior to the undertaking and affording them an opportunity to comment within seven days of notification. If the agency official determines that circumstances do not permit seven days for comment, the agency official shall notify the Council, the SHPO/THPO and the Indian tribe or Native Hawaiian organization and invite any comments within the time available.

(c) Local governments responsible for section 106 compliance. When a local government official serves as the agency official for section 106 compliance, paragraphs (a) and (b) of this section also apply to an imminent threat to public health or safety as a result of a natural disaster or emergency declared by a local government's chief executive officer or legislative body, provided that if the Council or SHPO/THPO objects to the proposed action within seven days, the agency official shall comply with §§800.3 through 800.6.

(d) Applicability. This section applies only to undertakings that will be implemented within 30 days after the disaster or emergency has been formally declared by the appropriate authority. An agency may request an extension of the period of applicability from the Council prior to the expiration of the 30 days. Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of section 106 and this part.

§800.13 Post-review discoveries.

(a) Planning for subsequent discoveries—(1) Using a programmatic agreement. An agency official may develop a programmatic agreement pursuant to §800.14(b) to govern the actions to be taken when historic properties are discovered during the implementation of an undertaking.

(2) Using agreement documents. When the agency official's identification efforts in accordance with §800.4 indicate that historic properties are likely to be discovered during implementation of an undertaking and no programmatic agreement has been developed pursuant to paragraph (a)(1) of this section, the agency official shall include in any finding of no adverse effect or memorandum of agreement a process to resolve any adverse effects upon such properties. Actions in conformance with the process satisfy the agency official's responsibilities under section 106 and this part.

(b) Discoveries without prior planning. If historic properties are discovered or unanticipated effects on historic properties found after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section, the agency official shall make reasonable efforts to avoid, minimize or mitigate adverse effects to such properties and:

(1) If the agency official has not approved the undertaking or if construction on an approved undertaking has not commenced, consult to resolve adverse effects pursuant to §800.6; or

(2) If the agency official, the SHPO/THPO and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property agree that such property is of value solely for its scientific, prehistoric, historic or archeological data, the agency official may comply with the Archeological and Historic Preservation Act instead of the procedures in this part and provide the Council, the SHPO/THPO, and the Indian tribe or Native Hawaiian organization with a report on the actions within a reasonable time after they are completed; or

(3) If the agency official has approved the undertaking and construction has commenced, determine actions that the agency official can take to resolve adverse effects, and notify the SHPO/THPO, any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to the affected property, and the Council within 48 hours of the discovery. The notification shall describe the agency official's assessment of National Register eligibility of the property and proposed actions to resolve the adverse effects. The SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council shall respond within 48 hours of the notification. The agency official shall take into account their recommendations regarding National Register eligibility and proposed actions, and then carry out appropriate actions. The agency official shall provide the SHPO/THPO, the Indian tribe or Native Hawaiian organization and the Council a report of the actions when they are completed.

(c) Eligibility of properties. The agency official, in consultation with the SHPO/THPO, may assume a newly-discovered property to be eligible for the National Register for purposes of section 106. The agency official shall specify the National Register criteria used to assume the property's eligibility so that information can be used in the resolution of adverse effects.

(d) Discoveries on tribal lands. If historic properties are discovered on tribal lands, or there are unanticipated effects on historic properties found on tribal lands, after the agency official has completed the section 106 process without establishing a process under paragraph (a) of this section and construction has commenced, the agency official shall comply with applicable tribal regulations and procedures and obtain the concurrence of the Indian tribe on the proposed
§800.14 Federal agency program alternatives.

(a) Alternate procedures. An agency official may develop procedures to implement section 106 and substitute them for all or part of subpart B of this part if they are consistent with the Council's regulations pursuant to section 110(a)(2)(E) of the act.

(1) Development of procedures. The agency official shall consult with the Council, the National Conference of State Historic Preservation Officers, or individual SHPO/THPOs, as appropriate, and Indian tribes and Native Hawaiian organizations, as specified in paragraph (f) of this section, in the development of alternate procedures, publish notice of the availability of proposed alternate procedures in the FEDERAL REGISTER and take other appropriate steps to seek public input during the development of alternate procedures.

(2) Council review. The agency official shall submit the proposed alternate procedures to the Council for a 60-day review period. If the Council finds the procedures to be consistent with this part, it shall notify the agency official and the agency official may adopt them as final alternate procedures.

(3) Notice. The agency official shall notify the parties with which it has consulted and publish notice of final alternate procedures in the FEDERAL REGISTER.

(4) Legal effect. Alternate procedures adopted pursuant to this subpart substitute for the Council's regulations for the purposes of the agency's compliance with section 106, except that where an Indian tribe has entered into an agreement with the Council to substitute tribal historic preservation regulations for the Council's regulations under section 101(d)(5) of the act, the agency shall follow those regulations in lieu of the agency's procedures regarding undertakings on tribal lands. Prior to the Council entering into such agreements, the Council will provide Federal agencies notice and opportunity to comment on the proposed substitute tribal regulations.

(b) Programmatic agreements. The Council and the agency official may negotiate a programmatic agreement to govern the implementation of a particular program or the resolution of adverse effects from certain complex project situations or multiple undertakings.

(1) Use of programmatic agreements. A programmatic agreement may be used:

(i) When effects on historic properties are similar and repetitive or are multi-State or regional in scope;

(ii) When effects on historic properties cannot be fully determined prior to approval of an undertaking;

(iii) When nonfederal parties are delegated major decisionmaking responsibilities;

(iv) Where routine management activities are undertaken at Federal installations, facilities, or other land-management units; or

(v) Where other circumstances warrant a departure from the normal section 106 process.

(2) Developing programmatic agreements for agency programs. (i) The consultation shall involve, as appropriate, SHPO/THPOs, the National Conference of State Historic Preservation Officers (NCSHPO), Indian tribes and Native Hawaiian organizations, other Federal agencies, and members of the public. If the programmatic agreement has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the agency official shall also follow paragraph (f) of this section.

(ii) Public participation. The agency official shall arrange for public participation appropriate to the subject matter and the scope of the program and in accordance with subpart A of this part. The agency official shall consider the nature of the program and its likely effects on historic properties and take steps to involve the individuals, organizations and entities likely to be interested.

(iii) Effect. The programmatic agreement shall take effect when executed by the Council, the agency official and the appropriate SHPOs/THPOs when the programmatic agreement concerns a specific region or the president of NCSHPO when NCSHPO has participated in the consultation. A programmatic agreement shall take effect on tribal lands only when the THPO, Indian tribe, or a designated representative of the tribe is a signatory to the agreement. Compliance with the procedures established by an approved programmatic agreement satisfies the agency's section 106 responsibilities for all individual undertakings of the program covered by the agreement until it expires or is terminated by the agency, the
undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural
official set forth in paragraph (f) of this section.

steps to involve individuals, organizations and entities likely to be interested.

proponent of the exemption shall consider the nature of the exemption and its likely effects on historic properties and take
subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The
exemption with the purposes of the act, taking into consideration  the magnitude of the exempted undertaking or program
relevant agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the
summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted. Unless it requests further
information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the
Council review of proposed exemptions. The Council shall review an exemption proposal that is supported by
documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of
paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and
summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted. Unless it requests further
information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the
relevant agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the
exemption with the purposes of the act, taking into consideration the magnitude of the exempted undertaking or program
and the likelihood of impairment of historic properties in accordance with section 214 of the act.

(c) Exempted categories—(1) Criteria for establishing. The Council or an agency official may propose a program or
category of undertakings that may be exempted from review under the provisions of subpart B of this part, if the program
or category meets the following criteria:

(i) The actions within the program or category would otherwise qualify as “undertakings” as defined in §800.16;

(ii) The potential effects of the undertakings within the program or category upon historic properties are foreseeable
and likely to be minimal or not adverse; and

(iii) Exemption of the program or category is consistent with the purposes of the act.

(2) Public participation. The proponent of the exemption shall arrange for public participation appropriate to the
subject matter and the scope of the exemption and in accordance with the standards in subpart A of this part. The
proponent of the exemption shall consider the nature of the exemption and its likely effects on historic properties and take
steps to involve individuals, organizations and entities likely to be interested.

(3) Consultation with SHPOs/THPOs. The proponent of the exemption shall notify and consider the views of the
SHPOs/THPOs on the exemption.

(4) Consultation with Indian tribes and Native Hawaiian organizations. If the exempted program or category of
undertakings has the potential to affect historic properties on tribal lands or historic properties of religious and cultural
significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency
official set forth in paragraph (f) of this section.

(5) Council review of proposed exemptions. The Council shall review an exemption proposal that is supported by
documentation describing the program or category for which the exemption is sought, demonstrating that the criteria of
paragraph (c)(1) of this section have been met, describing the methods used to seek the views of the public, and
summarizing any views submitted by the SHPO/THPOs, the public, and any others consulted. Unless it requests further
information, the Council shall approve or reject the proposed exemption within 30 days of receipt, and thereafter notify the
relevant agency official and SHPO/THPOs of the decision. The decision shall be based on the consistency of the
exemption with the purposes of the act, taking into consideration the magnitude of the exempted undertaking or program
and the likelihood of impairment of historic properties in accordance with section 214 of the act.

(6) Legal consequences. Any undertaking that falls within an approved exempted program or category shall require no
further review pursuant to subpart B of this part, unless the agency official or the Council determines that there are
circumstances under which the normally excluded undertaking should be reviewed under subpart B of this part.

(7) Termination. The Council may terminate an exemption at the request of the agency official or when the Council
determines that the exemption no longer meets the criteria of paragraph (c)(1) of this section. The Council shall notify the
agency official 30 days before termination becomes effective.

(8) Notice. The proponent of the exemption shall publish notice of any approved exemption in the FEDERAL REGISTER.
(d) Standard treatments—(1) Establishment. The Council, on its own initiative or at the request of another party, may establish standard methods for the treatment of a category of historic properties, a category of undertakings, or a category of effects on historic properties to assist Federal agencies in satisfying the requirements of subpart B of this part. The Council shall publish notice of standard treatments in the FEDERAL REGISTER.

(2) Public participation. The Council shall arrange for public participation appropriate to the subject matter and the scope of the standard treatment and consistent with subpart A of this part. The Council shall consider the nature of the standard treatment and its likely effects on historic properties and the individuals, organizations and entities likely to be interested. Where an agency official has proposed a standard treatment, the Council may request the agency official to arrange for public involvement.

(3) Consultation with SHPOs/THPOs. The Council shall notify and consider the views of SHPOs/THPOs on the proposed standard treatment.

(4) Consultation with Indian tribes and Native Hawaiian organizations. If the proposed standard treatment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) Termination. The Council may terminate a standard treatment by publication of a notice in the FEDERAL REGISTER 30 days before the termination takes effect.

(e) Program comments. An agency official may request the Council to comment on a category of undertakings in lieu of conducting individual reviews under §§800.4 through 800.6. The Council may provide program comments at its own initiative.

(1) Agency request. The agency official shall identify the category of undertakings, specify the likely effects on historic properties, specify the steps the agency official will take to ensure that the effects are taken into account, identify the time period for which the comment is requested and summarize any views submitted by the public.

(2) Public participation. The agency official shall arrange for public participation appropriate to the subject matter and the scope of the category and in accordance with the standards in subpart A of this part. The agency official shall consider the nature of the undertakings and their likely effects on historic properties and the individuals, organizations and entities likely to be interested.

(3) Consultation with SHPOs/THPOs. The Council shall notify and consider the views of SHPOs/THPOs on the proposed program comment.

(4) Consultation with Indian tribes and Native Hawaiian organizations. If the program comment has the potential to affect historic properties on tribal lands or historic properties of religious and cultural significance to an Indian tribe or Native Hawaiian organization, the Council shall follow the requirements for the agency official set forth in paragraph (f) of this section.

(5) Council action. Unless the Council requests additional documentation, notifies the agency official that it will decline to comment, or obtains the consent of the agency official to extend the period for providing comment, the Council shall comment to the agency official within 45 days of the request.

(i) If the Council comments, the agency official shall take into account the comments of the Council in carrying out the undertakings within the category and publish notice in the FEDERAL REGISTER of the Council’s comments and steps the agency will take to ensure that effects to historic properties are taken into account.

(ii) If the Council declines to comment, the agency official shall continue to comply with the requirements of §§800.3 through 800.6 for the individual undertakings.

(6) Withdrawal of comment. If the Council determines that the consideration of historic properties is not being carried out in a manner consistent with the program comment, the Council may withdraw the comment and the agency official shall comply with the requirements of §§800.3 through 800.6 for the individual undertakings.

(f) Consultation with Indian tribes and Native Hawaiian organizations when developing program alternatives. Whenever an agency official proposes a program alternative pursuant to paragraphs (a) through (e) of this section, the agency official shall ensure that development of the program alternative includes appropriate government-to-government consultation with affected Indian tribes and consultation with affected Native Hawaiian organizations.

(1) Identifying affected Indian tribes and Native Hawaiian organizations. If any undertaking covered by a proposed program alternative has the potential to affect historic properties on tribal lands, the agency official shall identify and consult with the Indian tribes having jurisdiction over such lands. If a proposed program alternative has the potential to affect historic properties of religious and cultural significance to an Indian tribe or a Native Hawaiian organization which are located off tribal lands, the agency official shall identify those Indian tribes and Native Hawaiian organizations that might
attach religious and cultural significance to such properties and consult with them. When a proposed program alternative has nationwide applicability, the agency official shall identify an appropriate government to government consultation with Indian tribes and consult with Native Hawaiian organizations in accordance with existing Executive orders, Presidential memoranda, and applicable provisions of law.

(2) Results of consultation. The agency official shall provide summaries of the views, along with copies of any written comments, provided by affected Indian tribes and Native Hawaiian organizations to the Council as part of the documentation for the proposed program alternative. The agency official and the Council shall take those views into account in reaching a final decision on the proposed program alternative.


§800.15 Tribal, State, and local program alternatives. [Reserved]

§800.16 Definitions.


(b) Agency means agency as defined in 5 U.S.C. 551.

(c) Approval of the expenditure of funds means any final agency decision authorizing or permitting the expenditure of Federal funds or financial assistance on an undertaking, including any agency decision that may be subject to an administrative appeal.

(d) Area of potential effects means the 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.

(e) Comment means the findings and recommendations of the Council formally provided in writing to the head of a Federal agency under section 106.

(f) Consultation means the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the section 106 process. The Secretary’s “Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act” provide further guidance on consultation.

(g) Council means the Advisory Council on Historic Preservation or a Council member or employee designated to act for the Council.

(h) Day or days means calendar days.

(i) Effect means alteration to the characteristics of a historic property qualifying it for inclusion in or eligibility for the National Register.

(j) Foreclosure means an action taken by an agency official that effectively precludes the Council from providing comments which the agency official can meaningfully consider prior to the approval of the undertaking.

(k) Head of the agency means the chief official of the Federal agency responsible for all aspects of the agency's actions. If a State, local, or tribal government has assumed or has been delegated responsibility for section 106 compliance, the head of that unit of government shall be considered the head of the agency.

(l)(1) Historic property 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. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

(2) The term eligible for inclusion in the National Register includes both properties formally determined as such in accordance with regulations of the Secretary of the Interior and all other properties that meet the National Register criteria.

(m) Indian tribe means an Indian tribe, band, nation, or other organized group or community, including a native village, regional corporation, or village corporation, as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
(n) **Local government** means a city, county, parish, township, municipality, borough, or other general purpose political subdivision of a State.

(o) **Memorandum of agreement** means the document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking upon historic properties.

(p) **National Historic Landmark** means a historic property that the Secretary of the Interior has designated a National Historic Landmark.

(q) **National Register** means the National Register of Historic Places maintained by the Secretary of the Interior.

(r) **National Register criteria** means the criteria established by the Secretary of the Interior for use in evaluating the eligibility of properties for the National Register (36 CFR part 60).

(s)(1) **Native Hawaiian organization** means any organization which serves and represents the interests of Native Hawaiians; has as a primary and stated purpose the provision of services to Native Hawaiians; and has demonstrated expertise in aspects of historic preservation that are significant to Native Hawaiians.

(2) **Native Hawaiian** means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

(t) **Programmatic agreement** means a document that records the terms and conditions agreed upon to resolve the potential adverse effects of a Federal agency program, complex undertaking or other situations in accordance with §800.14(b).

(u) **Secretary** means the Secretary of the Interior acting through the Director of the National Park Service except where otherwise specified.

(v) **State Historic Preservation Officer (SHPO)** means the official appointed or designated pursuant to section 101(b)(1) of the act to administer the State historic preservation program or a representative designated to act for the State historic preservation officer.

(w) **Tribal Historic Preservation Officer (THPO)** means the tribal official appointed by the tribe’s chief governing authority or designated by a tribal ordinance or preservation program who has assumed the responsibilities of the SHPO for purposes of section 106 compliance on tribal lands in accordance with section 101(d)(2) of the act.

(x) **Tribal lands** means all lands within the exterior boundaries of any Indian reservation and all dependent Indian communities.

(y) **Undertaking** means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including those carried out by or on behalf of a Federal agency; those carried out with Federal financial assistance; and those requiring a Federal permit, license or approval.

(z) **Senior policy official** means the senior policy level official designated by the head of the agency pursuant to section 3(e) of Executive Order 13287.

[65 FR 77725, Dec. 12, 2000, as amended at 69 FR 40555, July 6, 2004]

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Appendix A to Part 800—Criteria for Council Involvement in Reviewing Individual section 106 Cases

(a) **Introduction.** This appendix sets forth the criteria that will be used by the Council to determine whether to enter an individual section 106 review that it normally would not be involved in.

(b) **General policy.** The Council may choose to exercise its authorities under the section 106 regulations to participate in an individual project pursuant to the following criteria. However, the Council will not always elect to participate even though one or more of the criteria may be met.

(c) **Specific criteria.** The Council is likely to enter the section 106 process at the steps specified in the regulations in this part when an undertaking:

(1) **Has substantial impacts on important historic properties.** This may include adverse effects on properties that possess a national level of significance or on properties that are of unusual or noteworthy importance or are a rare property type; or adverse effects to large numbers of historic properties, such as impacts to multiple properties within a historic district.

(2) **Presents important questions of policy or interpretation.** This may include questions about how the Council’s regulations are being applied or interpreted, including possible foreclosure or anticipatory demolition situations; situations
where the outcome will set a precedent affecting Council policies or program goals; or the development of programmatic agreements that alter the way the section 106 process is applied to a group or type of undertakings.

(3) **Has the potential for presenting procedural problems.** This may include cases with substantial public controversy that is related to historic preservation issues; with disputes among or about consulting parties which the Council's involvement could help resolve; that are involved or likely to be involved in litigation on the basis of section 106; or carried out by a Federal agency, in a State or locality, or on tribal lands where the Council has previously identified problems with section 106 compliance pursuant to §800.9(d)(2).

(4) **Presents issues of concern to Indian tribes or Native Hawaiian organizations.** This may include cases where there have been concerns raised about the identification of, evaluation of or assessment of effects on historic properties to which an Indian tribe or Native Hawaiian organization attaches religious and cultural significance; where an Indian tribe or Native Hawaiian organization has requested Council involvement to assist in the resolution of adverse effects; or where there are questions relating to policy, interpretation or precedent under section 106 or its relation to other authorities, such as the Native American Graves Protection and Repatriation Act.

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