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March 23, 2015

Chairman Martin Honigberg
New Hampshire Site Evaluation Committee
N.H. Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, NH 03301
Sent by email to David Wiesner

Re: N.H. Site Evaluation Committee Rulemaking, Docket No. 2014-04

Dear Chairman Honigberg and members of the committee:

The N.H. Preservation Alliance appreciates the important progress toward the goal of improving the Site Evaluation Committee (SEC) process. We urge additional changes to the Initial Proposals to clarify and improve N.H. Administrative Rules, chapters Site 100-300, relative to historic properties and to meet requirements of recent legislation.

We are providing this letter and two attachments with proposed language changes for several areas of the rules. The revised language was developed with input from the National Trust for Historic Preservation, the N.H. Division of Historical Resources and additional advisors.

The Preservation Alliance is a statewide non-profit historic preservation group. We have active projects and deep networks across New Hampshire. Much of our work relates to directing investment in ways that balances growth with the protection and revitalization of special places and landscapes that make our state a good place to live, work and visit.

We have experienced a substantial increase in calls for assistance with concerns about addressing potential impacts on historic resources from energy project proposals over the last few years. These constituents are owners of historic properties, citizens concerned about scenic and historic landscapes, and representatives of private and public sector groups like heritage commissions, historical societies, and groups involved in community and economic development.

Our revisions in Attachment A address subjects required by SB99 and SB245

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such as our new language associated with criteria for unreasonable adverse effects and finding of public interest.

Several of our revisions further **align SEC review with reviews of Section 106 under the National Historic Preservation Act**. Consistency in review under the state and federal review process, where possible, will benefit developers, agencies, and the public alike.

Other revisions provide **consistency in use of “historic.”** Also, because of the **landscape-scale** nature of many applications that come before the SEC, we have provided language to explain the definition of “historic” in Attachment B.

Please contact me if you have any questions, and thank you for your work to improve the SEC rule-making process.

Sincerely,



Jennifer Goodman
Executive Director

**Attachment A: NATIONAL TRUST FOR HISTORIC PRESERVATION/
NH PRESERVATION ALLIANCE
SEC RULE RECOMMENDATIONS, 3/23/15
1. Adverse Effects on Historic Sites**

Current Draft Language	Revised Language
<p>Determining Adverse Effects Section 301.14(b): In determining whether a proposed energy facility will have an unreasonable adverse effect on historic sites, the committee shall: (1) Consider the nature and significance of the historic and archaeological properties identified by the applicant; (2) Consider the effectiveness of the measures proposed by the applicant to avoid, minimize, or mitigate unreasonable adverse effects on historic properties and archaeological resources; and (3) Consider the status of the applicant’s consultations with the New Hampshire Division of Historical Resources and, if applicable, the federal lead agency.</p>	<p>Determining Adverse Effects Section 301.14(b): In determining whether a proposed energy facility will have an unreasonable adverse effect on historic sites, the committee shall:</p> <ul style="list-style-type: none"> (1) Determine that the project applicant has identified all adverse effects that may be caused by the proposal; (2) Determine that the project applicant has applied the criteria for unreasonable adverse effects; (3) Determine whether the applicant has fully explored project alternatives that would avoid, minimize, or mitigate unreasonable adverse effects; and (4) Determine whether the applicant is using the best practical measures to avoid, minimize, or mitigate unreasonable adverse effects on historic properties and archaeological resources, as determined in consultation with the New Hampshire Division of Historical Resources and, if applicable, the federal lead agency.
<p>Adverse Effect No current language.</p>	<p>Adverse Effect An adverse effect is found when a proposed project 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</p>

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		<p>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.</p>
<p>Unreasonable Adverse Effect No current language.</p>		<p>Unreasonable Adverse Effect A proposed project has an unreasonable adverse effect on Historic Sites if any one or more of the following conditions is present: (1) the project could cause the physical destruction of or damage to all or part of the historic site; or (2) the project will result in significant alteration of a historic site that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 C.F.R. Part 68) and applicable guidelines; or (3) the project would result in removal of the historic site from its historic location; or (4) the project would result in change to the character of the historic site's use or of physical features within the property's setting that contribute to its historic significance; or (5) the project would introduce visual, atmospheric or audible elements that diminish the integrity of the site's significant historic features; or (6) the project would lead to neglect of a</p>

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	<p>historic site which causes its deterioration; or (7) the project would have an adverse effect on a National Historic Landmark property, or other highly unusual or nationally significant historic site; or (8) the project would cause substantial impacts on a large number of historic sites; or (9) the project generates substantial public interest or concern; or (10) the project's impacts to historic sites would be permanent, or irreversible; or (11) the impact would jeopardize a historic site's listing on or eligibility for the National Register; or (12) the impact could lead to a change in use or ownership that would jeopardize the long-term future of the historic site.</p>
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2. Project Application Contents

<u>Current Draft Language</u>	<u>Revised Language</u>
<p>Application Contents Site 301.06: Effects on Historic Sites Sites. Each application shall include the following information regarding the effects of the, and plans for avoiding, minimizing, or mitigating any unreasonable adverse effects of, the proposed facility on historic sites: (a) Demonstrate that project review of the proposed facility has been initiated for purposes of compliance with Section 106 of the National Historic Preservation Act, 16 U.S.C. §470, or RSA 227-C:9, as applicable; (b) Identify all areas of potential archaeological sensitivity located in the proposed facility area; (c) Identify all historic resources located in the proposed facility area or within the area of potential effects as defined in 36 C.F.R. §800.16(d);</p>	<p>Application Contents Site 301.06: Effects on Historic Sites Sites. Each application shall include the following information regarding the identification of historic sites, and the anticipated adverse effects, including cumulative impacts and landscape level impacts, of, and plans for, avoiding, minimizing, or mitigating any unreasonable adverse effects of, the proposed facility on historic sites: (a) Demonstrate that project review of the proposed facility has been initiated for purposes of compliance with Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108, or RSA 227-C:9, as applicable; (b) Identify all historic properties and areas of potential</p>

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<p>(d) Identify the best practical measures planned to avoid, minimize, or mitigate potential adverse effects on archaeological and historic resources;</p> <p>(e) Describe the applicant’s plans to implement any measures identified pursuant to (d) above; and</p> <p>(f) Describe the status of the applicant’s consultations with the New Hampshire Division of Historical Resources, and, if applicable, with the lead federal agency.</p>	<p>archaeological sensitivity located within the area of potential effects as defined in 36 C.F.R. § 800.16(d);</p> <p>(c) Provide a finding by the N.H. Division of Historical Resources and, if applicable, by the lead federal agency, of no historic properties affected, no adverse effect, or adverse effect.</p> <p>(d) Develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate potential adverse effects on historic sites.</p> <p>(e) Describe the applicant’s plans to implement any measures identified pursuant to (d) above; and</p> <p>(f) Describe the status of the applicant’s consultations with the New Hampshire Division of Historical Resources, and, if applicable, with the lead federal agency.</p>
<p>Requirements for Applications for Certificates Site: 301.03(c)(5): Identification of natural and other resources at or within or adjacent to the site.</p>	<p>Requirements for Applications for Certificates Site: 301.03(c)(5): Identification of natural, historic, and other resources at or within or adjacent to the site.</p>

3. Cumulative Impacts

<u>Current Draft Language</u>	<u>Revised Language</u>
<p>Cumulative Impacts Site 102.14: “Cumulative impacts” means the totality of effects resulting from the proposed facility, all existing energy facilities, all energy facilities for which a certificate of site and facility has been granted, and all proposed energy facilities for which an application has been accepted.</p>	<p>Cumulative Impacts Site 102.14: “Cumulative impacts” means the totality of effects resulting from the proposed facility, all existing energy facilities, all energy facilities for which a certificate of site and facility has been granted, and all proposed energy facilities for which an application has been accepted. Cumulative impacts include the impacts on the environment which result from the incremental impact of the project proposal when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or</p>

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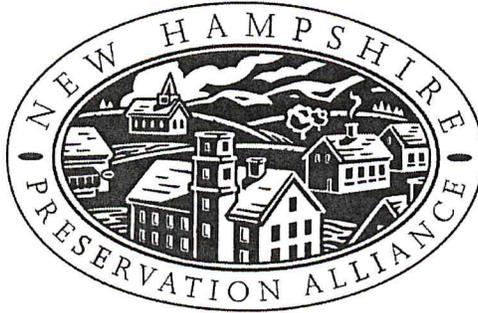
	<p>person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.</p>
<p>Landscape Definition Site 102.19: “Landscape” means the characteristic, visible features of an area including landforms, water forms, vegetation, cultural features and all other objects and aspects of natural and human origin.</p>	<p>Landscape Definition Site 102.19: “Landscape” means the characteristic, visible features of an area including landforms, water forms, vegetation, historic and cultural features and all other objects and aspects of natural and human origin.</p>

4. Public Interest

Current Draft Language	Revised Language
<p>Public Interest</p> <p>No current language.</p>	<p>Public Interest</p> <p>To determine whether a proposed project is in the public interest, the following criteria, at a minimum, should be considered:</p> <p>(1) Whether the net effects to environmental resources, historic properties, and cultural resources caused by the facility, considering both beneficial and adverse effects, serve the public interest.</p> <p>(2) Whether the net economic effects of the facility, including but not limited to costs and benefits to energy consumers, property owners, state and local tax revenues, employment opportunities, and local and regional economies, serve the public interest.</p> <p>(3) Whether construction and operation of the facility will be consistent with federal, regional, state, and local policies.</p>

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		<p>(4) Whether the facility as proposed is consistent with municipal master plans and land use regulations pertaining to (i) natural, historic, and scenic cultural resources and (ii) public health and safety, air quality, economic development, and energy resources.</p> <p>(5) Such additional public interest criteria as may be deemed pertinent by the committee.</p>
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Attachment B: ADDITIONAL PRESERVATION ALLIANCE SEC RULE RECOMMENDATIONS, 3/23/15

In addition to the suggestions in Attachment A, the Preservation Alliance feels these additions are important:

In Sites 301.06 (f) and 301.14 (b) (4) as stated in Attachment A revisions: Add “interested parties” to convey public participation in state and federal processes.

In Site 301.16 (a) of Initial Proposal: substitute “historic” for “cultural” for consistency.

In Site 102.17 of Initial Proposal: Add clarity to definition of “historic.” Because of the landscape-scale nature of many applications that come before the SEC, we also want to bring to your attention that the definition of historic in the rules includes natural, designed and rural landscapes.

Current language for Site 102.17: “Historic sites” means “historic property,” as such term is defined in 36 C.F.R. §800.16(1).

Add this sentence: Historic property includes buildings, structures, sites, districts, and objects as well as rural, designed and natural landscapes.

Background:

A rural historic landscape is defined as a geographical area that historically has been used by people, or shaped or modified by human activity, occupancy, or intervention, and that possesses a significant concentration, linkage, or continuity of areas of land use, vegetation, buildings and structures, roads and waterways, and natural features. (NPS Bulletin 30: *Guidelines for Evaluating and Documenting Rural Historic Landscapes*.) Also, natural landscapes can hold deep cultural significance to Native American tribes and other communities. See NPS Bulletin 38: *Guidelines for Evaluating and Documenting Traditional Cultural Properties*. NPS Bulletin 18 offers guidance on designed historic landscapes.

In the identification of historic resources and determination of adverse effect, many factors including setting must be considered. According to the National Register Bulletin #15, setting is

defined as “the physical environment of a historic property. Whereas location refers to the specific place where a property was built or an event occurred, setting refers to the *character* of the place in which the property played its historical role. It involves *how*, not just *where*, the property is situated and its relationship to surrounding features and open space.^[1]” Furthermore, “the way in which a property is positioned in its environment can reflect the designer’s concept of nature and aesthetic preferences.” These feature can include topographical features, vegetation, the relationships between buildings and other features or open space, and simple manmade features such as paths or fences. It is important that the relationships between the features, the property (or properties), and its surroundings be identified and considered, in addition to the features themselves.

^[1] http://www.nps.gov/nr/publications/bulletins/nrb15/nrb15_8.htm