



NEW HAMPSHIRE DIVISION OF HISTORICAL RESOURCES

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Policy Memorandum **Agency Review of Applications before the New Hampshire Site Evaluation Committee**

Policy

In order to determine whether an application for certificate before the New Hampshire Site Evaluation Committee (SEC) is complete, the Division of Historical Resources (DHR) conducts a preliminary review of the materials to determine whether they contain sufficient material for the DHR's purposes under Section 106 of the National Historic Preservation Act, 54 U.S.C. §306108. Site 301.06 of the administrative rules adopted by the SEC on December 15, 2015 provides a summary of the necessary information.

Background Information

Compared with previously adopted rules, the rules adopted by the SEC on December 15, 2015 provide expanded details on the application and certification processes. Among the topics covered are "Requirements for Applications for Certificate" (Site 301). Site 301.06, "Effects on Historic Sites" lists the information applications must include on identifying historic properties within a project area and plans for avoiding, minimizing, or mitigating potential adverse effects to those properties. The required information is:

- (a) Demonstration 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) Identification of all historic sites and areas of potential archaeological sensitivity located within the area of potential effects, as defined in 36 C.F.R. §800.16(d), available as noted in Appendix B;
- (c) Finding or determination by the division of historical resources of the department of cultural resources and, if applicable, the lead federal agency, that no historic properties would be affected, that there would be no adverse effects, or that there would be adverse effects to historic properties, if such a finding or determination has been made prior to the time of application.
- (d) Description of the measures planned to avoid, minimize, or mitigate potential adverse effects on historic sites and archaeological resources, and the alternative measures considered but rejected by the applicant; and
- (e) Description of the status of the applicant's consultations with the division of historical resources of the department of cultural resources, and, if applicable, with the lead federal

agency, and, to the extent known to the applicant, any consulting parties, as defined in 36 C.F.R. §800.2(c), available as noted in Appendix B.

Throughout the SEC rules, 36 C.F.R. §800 refers to the federal regulations implementing Section 106 of the National Historic Preservation Act, 54 U.S.C. §306108, which requires federal agencies to take into account the effects of their undertakings on historic properties, in consultation with the State Historic Preservation Office (SHPO), the Advisory Council on Historic Preservation, consulting parties, and the public. With rare exception, proposed energy projects seeking a certificate from the SEC are reviewed under the Section 106 regulations.

In New Hampshire, the State Historic Preservation Office is the DHR. In addition to their responsibilities and duties under Section 106 and other federal programs, SHPOs are charged with generating statewide standards and guidelines for identifying historic properties and archaeological sites and evaluating their significance and eligibility for the National Register of Historic Places.

Additional Definitions

At Site 102.23, the SEC rules define a historic site as a “historic property,” as defined in RSA 227-C:1, VI, namely “any building, structure, object, district, area or site that is significant in the history, architecture, archeology or culture of this state, its communities, or the nation.” The term includes “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,” pursuant to 36 C.F.R. §800.16(l)(1).

The SEC rules define area of potential effects (APE) as it is defined at 36 C.F.R. §800.16(d): “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.” 36 C.F.R. §800.4 (a) requires the lead federal agency, in consultation with the SHPO, to determine the area of potential effects as one of the earliest steps in a Section 106 review.

Supplemental Information on Agency Completeness Review

As part of its completeness review and acceptance of applications, the SEC forwards a copy of the application to each of the state agencies with permitting or other regulatory authority, under state or federal law, to regulate any aspect of the construction or operation of the proposed facility (Site 301.10). State agencies are asked to review the application and notify the committee whether it contains sufficient information for their purposes. As noted above, the DHR reviews the materials to determine whether they contain sufficient information for the DHR’s purposes under Section 106.

The following provides supplemental information related to Site 301.06, (a) through (e), as well as the Section 106 review process:

- (a) As with all Section 106 reviews in New Hampshire, the DHR strongly encourages applicants to the SEC to work with the lead federal agency and the DHR at the earliest stages of project planning, in order to identify resources and find ways to avoid, minimize or mitigate any adverse effects to historic properties. Federal agencies have different processes for initiating 106 consultations, and the DHR may be able to supply assistance if applicants have questions about different federal agencies. To begin the review process with the DHR, applicant should complete and submit a Request for Project Review form (<http://www.nh.gov/nhdhr/review/>).

- (b) In New Hampshire, above-ground historic properties meeting the definition at Site 102.23 are identified through the preparation and submission of area and individual inventory forms. In a Section 106 review, the lead federal agency and the DHR consult on the area of potential effects and the appropriate scope of the identification efforts within that area. Information gathered and analyzed in individual inventory forms and historic district area forms provides a recommendation of whether a property is eligible for listing on the National Register of Historic Places and therefore considered historic for Section 106 purposes; the lead federal agency and the DHR review these materials and concur on eligibility findings. More information on New Hampshire standards and guidance for identifying historic properties is available at <http://www.nh.gov/nhdhr/programs/survey.htm>.

Areas of archaeological sensitivity are determined through phased investigations, in accordance with the state *Archaeological Standards and Guidance* (<http://www.nh.gov/nhdhr/review/archaeology.htm>). Most commonly, areas of archaeological sensitivity are determined following Phase IA investigations. However, for each project, the lead federal agency and the DHR again determine an appropriate area of potential effects and a scope of identification efforts, based on the physical characteristics of the project area, the nature of potential project effects, and the degree of known archaeological resources in the project area. In New Hampshire, following each phase of investigation, DHR staff archaeologists review reports and site forms and forward their findings to the lead federal agency. Additional information on archaeology in New Hampshire is available at <http://www.nh.gov/nhdhr/review/archaeology.htm>.

For all Section 106 projects, cultural resources consultants identifying and evaluating historic properties and archaeological sites must meet the US Secretary of the Interior's professional standards at http://www.nps.gov/history/local-law/arch_stnds_9.htm.

- (c) and (d) Continuing their consultation under Section 106, the lead federal agency and the DHR assess the proposed projects effects on identified historical resources. Section 106 findings may be: no historic properties affected, no adverse effect, or adverse effect. If the effects are adverse, consultation continues to develop and evaluate alternatives or modifications to the project that could avoid, minimize or mitigate adverse effects. Additional information and guidance on these steps is available on the website of the Advisory Council on Historic Preservation, <http://www.achp.gov/usersguide.html>. ACHP is the independent federal agency charged with administering the Section 106.
- (e) Early coordination and clear communication with the lead federal agency and the DHR will provide the SEC applicant with the information needed to describe the progress and findings of the 106 review at the time of application. Consulting parties to a Section 106 review are individuals and/or organizations with a demonstrated interest in the project. The lead federal agency approves their participation and, with the DHR, considers their views throughout the Section 106 review. Applicants for federal assistance, permits, licenses and other approvals are always entitled to participate as consulting parties. More information on the role of consulting parties is available at ACHP's "Working with Section 106" webpages at <http://www.achp.gov/work106.html>.

Comprehensive information on the project review process in New Hampshire is available on the DHR's Review and Compliance webpage, at <http://www.nh.gov/nhdhr/review/> or by contacting project review staff at 603-271-3483.