

Advisory Council on Historic Preservation

§ 801.7

of the Federal agency's document where the finding occurs. Unless the Executive Director objects within 10 days of receipt of such notice the Council need not be afforded further opportunity for comment. If the Executive Director objects to the finding of the applicant, the applicant shall comply with § 801.4.

§ 801.5 State Historic Preservation Officer responsibilities.

(a) The State Historic Preservation Officer shall have standing to participate in the review process established by section 110(c) of the HCDA of 1980 whenever it concerns a project located within the State Historic Preservation Officer's jurisdiction by the following means: providing, within 30 days, information requested by an applicant under § 801.3(b); responding, within 45 days, to submittal of a determination by the applicant under section 110 of the HCDA of 1980 that National Register property or property which meets the Criteria may be affected by the proposed project; participating in a Memorandum of Agreement that the applicant or the Executive Director may prepare under this part; and participating in a panel or full Council meeting that may be held pursuant to these regulations. Pursuant to section 110(c) of the HCDA of 1980, the State Historic Preservation Officer has a maximum period of 45 days in which to formally comment on an applicant's determination that the project may affect a property that is listed in the National Register or which may meet the Criteria for listing in the National Register. This period does not include the time during which the applicant seeks information from the State Historic Preservation Officer for determining whether a property meets the Criteria for listing in the National Register and whether such property is affected by the project.

(b) The failure of a State Historic Preservation Officer to participate in any required steps of the process set forth in this part shall not prohibit the Executive Director and the applicant from concluding the section 106 process, including the execution of a Memorandum of Agreement.

§ 801.6 Coordination with requirements under the National Environmental Policy Act (42 U.S.C. 4321 et seq.).

The National Historic Preservation Act and the National Environmental Policy Act create separate and distinct responsibilities. The National Historic Preservation Act applies to those aspects of a project which may affect National Register properties and those which are eligible for listing in the National Register. The requirements for the National Environmental Policy Act apply to the effect that the project will have on the human environment. To the extent that the applicant finds it practicable to do so, the requirements of these two statutes should be integrated. Some projects, for reasons other than the effects on historic properties, may require an Environmental Impact Statement (EIS) subject to the time requirements for a draft and final EIS, in which case the applicant may choose to separately relate to the State Historic Preservation Officer, the Department of the Interior, and the Council for purposes of section 110(c) of the HCDA of 1980. In that event, information in the draft EIS should indicate that compliance with section 106 and these regulations is underway and the final EIS should reflect the results of this process. Applicants are directed to 36 CFR 800.9, which describes in detail the manner in which the requirements of these two acts should be integrated and applies to all UDAG applicants under these regulations.

In those instances in which an Environmental Impact Statement will be prepared for the project, the applicant should consider phasing compliance with these procedures and the preparation of the Statement.

§ 801.7 Information requirements.

(a) *Information To Be Retained by Applicants Determining No Effect.* (1) Recommended Documentation for a Determination of No Effect. Adequate documentation of a Determination of No Effect pursuant to § 801.3(c)(2)(i) should include the following:

(i) A general discussion and chronology of the proposed project;

§ 801.7

36 CFR Ch. VIII (7-1-01 Edition)

(ii) A description of the proposed project including, as appropriate, photographs, maps, drawings, and specifications;

(iii) A statement that no National Register property or property which meets the Criteria exist in the project area, or a brief statement explaining why the Criteria of Effect (See § 801.3(c)) was found inapplicable;

(iv) Evidence of consultation with the State Historic Preservation Officer concerning the Determination of No Effect; and

(v) Evidence of efforts to inform the public concerning the Determination of No Effect.

(2) The information requirements set forth in this section are meant to serve as guidance for applicants in preparing No Effect Determinations. The information should be retained by the applicant, incorporated into any environmental reports or documents prepared concerning the project, and provided to the Executive Director only in the event of an objection to the applicant's determination.

(b) *Reports to the Council.* In order to adequately assess the impact of a proposed project on National Register and eligible properties, it is necessary for the Council to be provided certain information. For the purposes of developing Council comments on UDAG projects the following information is required. Generally, to the extent that relevant portions of a UDAG application meet the requirements set forth below it will be sufficient for the purposes of Council review and comment.

(1) *Documentation for Determination of No Adverse Effect.* Adequate documentation of a Determination of No Adverse Effect pursuant to § 801.3(c)(1) should include the following:

(i) A general discussion and chronology of the proposed project;

(ii) A description of the proposed project including, as appropriate, photographs, maps, drawings and specifications;

(iii) A copy of the National Register form or a copy of the Determination of Eligibility documentation for each property that will be affected by the project including a description of each property's physical appearance and significance;

(iv) A brief statement explaining why each of the Criteria of Adverse Effect (See § 801.3(c)(1)) was found inapplicable;

(v) Written views of the State Historic Preservation Officer concerning the Determination of No Adverse Effect, if available; and,

(vi) An estimate of the cost of the project including the amount of the UDAG grant and a description of any other Federal involvement.

(2) *Preliminary Case Reports.* Preliminary Case Reports should be submitted with a request for comments pursuant to § 801.4(b) and should include the following information:

(i) A general discussion and chronology of the proposed project;

(ii) The status of the project in the HUD approval process;

(iii) The status of the project in the National Environmental Policy Act compliance process and the target date for completion of all the applicant's environmental responsibilities;

(iv) A description of the proposed project including as appropriate, photographs, maps, drawings and specifications;

(v) A copy of the National Register form or a copy of the Determination of Eligibility documentation for each property that will be affected by the project including a description of each property's physical appearance and significance;

(vi) A brief statement explaining why any of the Criteria of Adverse Effect (See § 801.3(c)(1)(b)) apply;

(vii) Written views of the State Historic Preservation Officer concerning the effect on the property, if available;

(viii) The views of Federal agencies, State and local governments, and other groups or individuals when known as obtained through the OMB Circular A-95 process or the environmental review process, public hearings or other applicant processes;

(ix) A description and analysis of alternatives that would avoid the adverse effects;

(x) A description and analysis of alternatives that would mitigate the adverse effects; and,

(xi) An estimate of the cost of the project including the amount of the

UDAG grant and a description of any other Federal involvement.

(c) *Reports for Council Meetings.* Consideration of a proposed project by the full Council or a panel pursuant to §801.4(b) is based upon reports from the Executive Director, the State Historic Preservation Officer and Secretary of the Interior. Requirements for these reports are specified in 36 CFR 800.13(c). Additionally, reports from the applicant and the Department of HUD are required by these regulations. The requirements for these reports consist of the following:

(1) *Report of the Applicant.* The report from the applicant requesting comments shall include a copy of the relevant portions of the UDAG application; a general discussion and chronology of the proposed project; an account of the steps taken to comply with the National Environmental Policy Act (NEPA); any relevant supporting documentation in studies that the applicant has completed; an evaluation of the effect of the project upon the property or properties, with particular reference to the impact on the historical, architectural, archeological, and cultural values; steps taken or proposed by the applicant to avoid or mitigate adverse effects of the project; a thorough discussion of alternate courses of action; and an analysis comparing the advantages resulting from the project with the disadvantages resulting from the adverse effects on National Register or eligible properties.

(2) *Report of the Secretary of Housing and Urban Development.* The report from the Secretary shall include the status of the application in the UDAG approval process, past involvement of the Department with the applicant and the proposed project or land area for the proposed project, and information on how the applicant has met other requirements of the Department for the proposed project.

§ 801.8 Public participation.

(a) The Council encourages maximum public participation in the process established by these regulations. Particularly important, with respect to the UDAG program, is participation by the citizens of neighborhoods directly or indirectly affected by projects, and

by groups concerned with historic and cultural preservation.

(b) The applicant, in preparing and following its citizen participation plan called for by 24 CFR 570.456(c)(11)(i)(A), should ensure that adequate provision is made for participation by citizens and organizations having interests in historic preservation and in the historic and cultural values represented in affected neighborhoods. 24 CFR 570.431(c) sets forth criteria for citizen participation plans. These should be carefully considered with specific reference to ensuring that local concerns relevant to historic preservation are fully identified, and that citizens are provided with full and accurate information about each project and its effects on historic properties. The applicant should ensure that potentially concerned citizens and organizations are fully involved in the identification of properties which may meet the National Register Criteria, and that they are fully informed, in a timely manner, of determinations of No Effect, No Adverse Effect, and Adverse Effect, and of the progress of the consultation process. Applicants are referred to 36 CFR 800.15 for Council guidelines for public participation.

(c) The Council welcomes the views of the public, especially those groups which may be affected by the proposed project, during its evaluation of the applicant's determination of effect, and will solicit the participation of the public in Council and panel meetings held to consider projects.

APPENDIX 1 TO PART 801—IDENTIFICATION OF PROPERTIES: GENERAL

A. Introduction

Because of the high probability of locating properties which are listed in the National Register or which meet the Criteria for listing in many older city downtowns, this appendix is designed to serve as guidance for UDAG applicants in identifying such properties. This appendix sets forth guidance for applicants and does not set a fixed or inflexible standard for identification efforts.

B. Role of the State Historic Preservation Officer

In any effort to locate National Register properties or properties which meet the Criteria, the State Historic Preservation Officer is a key source of information and advice.