

JAN 21 1997

Mr. H. Bryan Mitchell
National Park Service
Heritage Preservation Services
P. O. Box 37127, MS 2255
Washington, DC 20013-7127

Dear Mr. Mitchell:

I am writing in reference to H32(2255), which transmitted Mr. de Teel Patterson Tiller's request for review and comment by January 17, 1997, of the draft proposed revisions to the Secretary of Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs. While we appreciate the opportunity to comment on these draft guidelines, we do not have any additional substantive comments to provide at this time.

If you have any questions concerning this correspondence, please contact me or Rosetta Virgilio of my staff at 301-415-3340.

Sincerely,

Original Signed By
RICHARD L. BANGART

Richard L. Bangart, Director
Office of State Programs

cc: Mr. de Teel Patterson Tiller
Acting Program Manager
Heritage Preservation Services

Distribution:

DIR RF (6S296)

RLBangart

PLohaus

SDroggitis

RVirgilio

FXCameron

Historic Preservation File

National Park Service File

DCD (SP 02)
PDR (YES X NO)

DOCUMENT NAME: G:\ROV\MITCHELL.NPS

*See E-Mail.

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	OSP	<input checked="" type="checkbox"/> E	<input checked="" type="checkbox"/> SDOSP	<input checked="" type="checkbox"/> OSP ADD	<input type="checkbox"/> OELD	<input type="checkbox"/> OSP:D
NAME	RVirgilio:ndb	<input checked="" type="checkbox"/> n	SCDroggitis	PHLohaus	FXCameron	RLBangart
DATE	01/14/97		01/14/97	01/15/97	01/15/97*	01/21/97

OSP FILE CODE: SP-H-2; SP-N-7

NRG FILE CENTER COPY

9702060023 970121
PDR STPRG ESGGEN
PDR

From: Francis Cameron
To: WNP9(ROV)
Date: 1/15/97 4:40pm
Subject: RESPONSE RE: PROPOSED FEDERAL STANDARDS & GUIDELINES FOR
NHPA -Reply

looks fine



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

January 21, 1997

Mr. H. Bryan Mitchell
National Park Service
Heritage Preservation Services
P. O. Box 37127, MS 2255
Washington, DC 20013-7127

Dear Mr. Mitchell:

I am writing in reference to H32(2255), which transmitted Mr. de Teel Patterson Tiller's request for review and comment by January 17, 1997, of the draft proposed revisions to the Secretary of Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs. While we appreciate the opportunity to comment on these draft guidelines, we do not have any additional substantive comments to provide at this time.

If you have any questions concerning this correspondence, please contact me or Rosetta Virgilio of my staff at 301-415-3340.

Sincerely,

Richard L. Bangart
Richard L. Bangart, Director
Office of State Programs

cc: Mr. de Teel Patterson Tiller
Acting Program Manager
Heritage Preservation Services



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

EXECUTIVE TASK MANAGEMENT SYSTEM

<<< PRINT SCREEN UPDATE FORM >>>

RLB2
11/29
TASK # - 6S296

DATE- 11/26/96

MAIL CTRL. - 1996

TASK STARTED - 11/26/96

TASK DUE - 01/15/97

TASK COMPLETED - / /

TASK DESCRIPTION - STANDARDS & GUIDELINES F/FEDERAL AGENCY HISTORIC PRESERVATION PROGRAMS FOR REVIEW AND COMMENTS

REQUESTING OFF. - DOI

REQUESTER - MR. TILLER

WITS -

0 FYP - N

PROG. -

PERSON -

STAFF LEAD -

PROG. AREA -

PROJECT STATUS -

DOI DUE DATE: 1/17/97

PLANNED ACC. - N

LEVEL CODE - 1

CC: RLB2
PHL

Assigned to: SCD/ROV

Please schedule a meeting with Paul and me to discuss this action and other related issues.

- 1) Does NRC have a formal program/plan?
- 2) Are NHPA issues appropriately addressed in the Crown Point Draft EIS?

RLB2
11/29/96



United States Department of the Interior

NATIONAL PARK SERVICE

P.O. Box 37127

Washington, D.C. 20013-7127

IN REPLY REFER TO:

H32(2255)

Dear Colleague:

Enclosed is the current proposal for revision of the Secretary of the Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs (i.e., "the Section 110 Guidelines"). This draft is a slightly revised version of the draft that was developed in consultation with the Advisory Council on Historic Preservation and distributed to Federal agencies and State Historic Preservation Officers in September of last year.

In recent weeks we reconsidered that earlier draft and developed an alternative draft that we shared with a small number of you. We have now concluded that the earlier version, revised and presented here, better meets the needs of the national program. If you have the alternative draft, please disregard it.

/Please review this draft and provide us with your comments by January 17, 1997. After we have reviewed your comments, we will make any appropriate revisions to the draft and publish it in the Federal Register for a formal comment period in the spring of 1997. Following that comment period the guidelines will be put in their final form as guidance, not as a regulation.

Please address your comments to H. Bryan Mitchell, National Park Service, Heritage Preservation Services, P. O. Box 37127 Mail Stop 2255, Washington, D. C. 20013-7127. You may also send your comments to Mr. Mitchell by FAX to (202) 343-1836, or by way of the Internet to bryan_mitchell@nps.gov. Mr. Mitchell's telephone number is (202) 343-9558.

Thank you for your interest. We look forward to hearing from you.

Sincerely,

de Teel Patterson Tiller, Acting Program Manager
Heritage Preservation Services

Enclosure

96 NOV 25 PM 4:08

OSP

THE SECRETARY OF THE INTERIOR'S STANDARDS AND GUIDELINES FOR
FEDERAL AGENCY HISTORIC PRESERVATION PROGRAMS:
SECTION 110 OF THE NATIONAL HISTORIC PRESERVATION ACT

INTRODUCTION

Section 110 of the National Historic Preservation Act (16 U.S.C. 470)

Section 110 of the National Historic Preservation Act (NHPA) is intended to ensure that historic preservation is fully integrated into the ongoing programs of all Federal agencies. This intent was first put forth in the preamble to the Act upon its initial adoption in 1966. When the Act was amended in 1980, Section 110 was added to expand and make more explicit the statute's statement of Federal agency responsibility for identifying historic properties and avoiding unnecessary damage to them. Section 110 also charges all Federal agencies with the affirmative responsibility for considering projects and programs that further the purposes of the NHPA, and it declares that the costs of preservation activities are eligible project costs in all undertakings conducted or assisted by Federal agencies.

The 1992 amendments to the Act further strengthened the provisions of Section 110. Under the current terms of the law, the heads of all Federal agencies must assume responsibility for the preservation of historic properties owned or controlled by their agencies. Each Federal agency *must* establish a *preservation program* for the identification, evaluation, nomination to the National Register, and protection of historic properties. Federal agencies *must* consult with the Secretary of the Interior (acting through the Director of the National Park Service) in establishing their preservation programs. Federal agencies *must*, to the maximum extent feasible, use historic properties available to them in carrying out their responsibilities. The 1992 additions to Section 110 also set out some specific benchmarks for Federal agency preservation programs, including

- a. historic properties under the jurisdiction or control of the agency are to be managed and maintained in a way that considers the preservation of their historic, archeological, architectural, and cultural values;
- b. historic properties not under agency jurisdiction or control but potentially affected by agency actions are to be fully considered in agency planning;
- c. agency preservation-related activities are to be carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations, and the private sector;
- d. agency procedures for compliance with section 106 of the Act are to be consistent with regulations issued by the Advisory Council on Historic Preservation; and

- e. an agency may not grant assistance or a license or permit to an applicant who damages or destroys historic property with the intent of avoiding the requirements of section 106, unless specific circumstances warrant such assistance.

The complete text of Section 110 is included as Appendix A to these Guidelines. Also included as Appendix B are those portions of Sections 1 and 2 of the NHPA that set out the purposes of that Act. Anyone unfamiliar with the purposes of the Act or with the specific provisions of Section 110 as amended in 1992 should study those texts in addition to the revised Guidelines.

Section 110 Guidelines

The Section 110 Guidelines were first published in the Federal Register on February 17, 1988 (53 FR 4727-46). This second edition has been revised to incorporate the 1992 amendments to the Act and to make the Guidelines easier to use.

These Guidelines neither replace nor incorporate other statutory authorities, regulations, or "The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation." Instead, the Guidelines attempt to show how Federal agencies should address these various other requirements and guidelines in carrying out their responsibilities under the Act. The heads of all Federal agencies, acting through their Federal Preservation officers, should become familiar with all the statutes, regulations, and guidelines that bear upon the agency historic preservation program required by Section 110. This edition of the Guidelines includes a separate Reference section that lists numerous sources of additional information that Federal program managers will find useful in carrying out historic preservation activities.

This second edition of the Section 110 Guidelines follows a format significantly different from that of its predecessor. The first edition followed the sequence of the statute and provided detailed guidance for each subsection of Section 110. The current edition instead takes the form of a general policy statement followed by standards and guidelines that will assist each Federal agency in establishing a preservation program that meets the various requirements of Section 110.

Consultation and Technical Assistance

Section 110(a)(2) requires that agency preservation programs be established "in consultation with the Secretary." Federal agencies seeking such consultation should contact the Associate Director, Cultural Resource Stewardship and Partnerships, National Park Service, Department of the Interior, P.O. Box 37127, Washington, D. C. 20013-7127. The Secretary's review of an agency program will be based upon the degree to which that program is consistent with the Act and with the standards and guidelines that follow. Upon request, the Secretary will also provide informal technical assistance to any agency on

DRAFT

3

NOVEMBER 20, 1996

questions concerning the establishment or improvement of the agency's historic preservation program. Requests for technical assistance should also be addressed to the Associate Director, Cultural Resources Stewardship and Partnerships, National Park Service.

Section 202(a)(6) of the Act provides that the Advisory Council also ~~can~~ may review Federal agency preservation programs and recommend improvements to such agencies. Where the Council carries out such a review, it will base any recommendations on its own regulations and on the standards and guidelines that follow.

NOVEMBER 20, 1996

**THE SECRETARY OF THE INTERIOR'S STANDARDS FOR
FEDERAL AGENCY HISTORIC PRESERVATION PROGRAMS**

STANDARD 1. The head of each Federal agency is responsible for the preservation of historic properties owned or controlled by the agency. Each Federal agency must establish a historic preservation program that, to the extent feasible given the agency's mission and mandates, is consistent with and seeks to advance the purposes of the National Historic Preservation Act. [Sec. 110(a)(1) and Sec. 110(a)(2)].

STANDARD 2. An agency must provide for the timely identification and evaluation of historic properties under agency jurisdiction or control and/or subject to effect by agency actions. [Sec. 110(a)(2)]

STANDARD 3. An agency must provide for the full consideration of historic properties, including properties outside the United States, when planning or considering approval of any action that might affect such properties. Such consideration shall include development of and adherence to agency procedures for Section 106 review that are consistent with the regulations of the Advisory Council on Historic Preservation and, as necessary, with certain provisions of the Native American Graves Protection and Repatriation Act. [Sec. 110(a)(2)(B), (C), and (E), and Sec. 402]

STANDARD 4. An agency must give priority to the use of historic properties to carry out agency missions. [Sec. 110(a)(1)]

STANDARD 5. An agency must provide for nomination of historic properties under the agency's jurisdiction or control to the National Register of Historic Places. [Sec. 110(a)(2)(A)].

STANDARD 6. An agency must give special consideration to impacts on National Historic Landmarks (NHLs). [Sec. 110(f)].

STANDARD 7. An agency must provide for consultation with knowledgeable and concerned parties outside the agency. [Sec. 110(a)(2)(D)].

STANDARD 8. An agency preservation program must be coordinated by a qualified Federal Preservation Officer situated within the agency's administrative structure so as to provide for effective interaction with and influence upon the agency's overall systems for planning, project administration, resource management, budgeting, and performance appraisals. The agency must provide sufficient resources to ensure the effective implementation of its preservation program. [Sec. 110(a)(2) and Sec. 110(c)].

NOVEMBER 20, 1996

**THE SECRETARY'S STANDARDS AND GUIDELINES FOR
FEDERAL AGENCY HISTORIC PRESERVATION PROGRAMS**

The following guidelines provide additional or more specific information on the steps an agency must take to establish and maintain a preservation program that meets each of the applicable Secretary's Standards.

STANDARD 1. The head of each Federal agency is responsible for the preservation of historic properties owned or controlled by the agency. Each Federal agency must establish a historic preservation program that, to the extent feasible given the agency's mission and mandates, is consistent with and seeks to advance the purposes of the National Historic Preservation Act.

GUIDELINES:

1. An agency historic preservation program must include specific provisions to ensure to the extent feasible the full consideration and appropriate preservation of historic properties under the agency's jurisdiction or control and of other historic properties affected by the agency's actions.

2. An agency historic preservation program is embodied in agency-wide policies, procedures, and activities. An agency historic preservation program is the vehicle for ensuring that the agency's mission-driven activities are carried out in a manner consistent with the purposes of National Historic Preservation Act. The program is not an activity carried out separate and apart from the activities mandated by the agency mission

3. The identification, evaluation, and preservation of historic properties must be the fundamental goal of any Federal agency preservation program. [Sec. 110(a)(2)]. However, an agency's ability to achieve this goal is fundamentally affected by its own mission and by whether it owns and manages historic property:

a. In those cases where historic property is under the jurisdiction and control of the agency, the agency has an affirmative responsibility to manage and maintain such property in a manner that takes into account the property's historic significance. In addition, Federal agencies have an affirmative responsibility to seek and use historic properties to the maximum extent feasible in carrying out their own activities.

b. Where an agency carries out its mission through the award of grant funds for specific activities, and where those activities will inevitably affect historic properties, the agency should, to the extent feasible, design its programs to encourage grantees to retain and make appropriate use of historic properties in carrying out grant-funded activities.

c. Where an agency's historic preservation activities are limited to considering the

NOVEMBER 20, 1996

impact of federally assisted, licensed, or permitted activities initiated by non-federal entities on non-federally owned historic properties, the agency's preservation responsibility may be more narrowly cast as seeking to avoid or minimize any damage to such properties that might otherwise occur as a result of such activities.

4. An agency historic preservation plan must be established in consultation with the Secretary of the Interior. [Sec. 110(a)(2)]. The Secretary's evaluation of an agency's historic preservation program will be based on the Standards and Guidelines that follow.

STANDARD 2. An agency must provide for the timely identification and evaluation of historic properties under agency jurisdiction or control and/or subject to effect by agency actions.

GUIDELINES:

(1) Identification and evaluation of historic properties are critical steps in their long-term management, as well as in project-specific planning by Federal agencies. Effective management of historic properties requires that they first be identified. The level of identification needed can vary depending on the nature of the property or property type, the nature of the agency's management authority, and the nature of the agency's possible effects on the property.

(2) The Secretary of the Interior has issued standards and guidelines for identification and evaluation of historic properties (in *The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* [48 FR 44720-44726]), which should be used as a guide to ensure that the preservation program's identification procedures will be adequate and appropriate. Identification and evaluation of historic properties must be conducted by professionally qualified individuals.

(3) Agency efforts to identify and evaluate historic properties should include early consultation with the State Historic Preservation Officer as appropriate to ensure that such efforts benefit from and build effectively upon any relevant data already included in the State's or Tribe's inventory. For information on consulting with an Indian tribe that has assumed State Historic Preservation Officer functions pursuant to Section 101(d)(2) of the Act, see Standard 7, Guideline 7(b).

(4) Where an agency is planning an action that will not affect specific land areas (for example, a nationwide program of assistance to local governments, farmers, or low-income homeowners), and the identification of specific historic properties subject to effect is not possible, the agency should nevertheless consider what types of historic properties may be affected directly or indirectly, and consider strategies that will minimize adverse effect and maximize beneficial effect on those properties. Such consideration should be carried out in consultation with the SHPO and others that

may be interested in, or affected by such action.

(5) Where an agency is planning an action that could affect historic properties directly or indirectly (e.g. a land use or construction project, a project that could change the way land or buildings are used or developed, or alter the social, cultural, or economic character of a community, and any program of assistance to or the issuance of a license for such activities), identification and evaluation should take place at the earliest possible stage of planning, and be coordinated with the earliest phases of any environmental review carried out under the National Environmental Policy Act and/or related authorities. Identification and evaluation efforts should be carried out in consultation with the SHPO and others that may be interested in, or affected by such action.

(6) Normally, an agency must seek to identify the full range of historic properties that may be affected by an agency program or activity, including but not limited to historic buildings and structures, archaeological sites, traditional cultural properties, designed and other cultural landscapes, historic linear features such as roads and trails, historic objects such as signs and street furniture, and historic districts comprising cohesive groups of such properties. In some cases, depending on management needs, it may not be necessary to identify exhaustively every historic property or historic property type. However, these decisions need to be reached in consultation with the SHPO, other preservation professionals, and perhaps others (e. g. Native Americans), and must be fully justified.

(7) Where identification and evaluation are carried out as part of a long-term property management program that is not driven by the needs of a particular project, it may be appropriate to conduct background studies to develop a "predictive model" of historic property distributions that can be used in evaluating the likely effects of particular land management projects as the program proceeds. It may also be appropriate and cost-effective to carry out the work in phases organized around particular property types or other such coherent units. For example, if historic architecture is of greater immediate concern than Native American traditional properties or archeological sites, a survey of architecture alone may be appropriate during a particular budget year, with ethnographic and archeological survey deferred until later. However, identification is not complete until all types of historic properties have been identified. Such work should be developed in consultation with the SHPO and other parties that may have knowledge of, or interest in, such properties.

(8) Identification of historic properties is an ongoing process. As time passes, events occur, or scholarly and public thinking about historical significance changes, so that properties not previously regarded as historically significant can become historically significant. Therefore, even when an area has been completely surveyed for historic properties of all types it may require re-investigation if many years have passed since the survey was completed. Such follow-on studies should in most cases

be limited in scale and focussed on filling gaps left by prior studies.

STANDARD 3. An agency must provide for the full consideration of historic properties, including properties outside the United States, when planning or considering approval of any action that might affect such properties. Such consideration shall include development of and adherence to agency procedures for Section 106 review that are consistent with the regulations of the Advisory Council on Historic Preservation and, as necessary, with certain provisions of the Native American Graves Protection and Repatriation Act.

GUIDELINES:

- (1) Federal agencies have an affirmative responsibility under Section 110 to consider their activities' impacts on our nation's historic resources. This responsibility extends to a systematic consideration of non-Federal properties outside the boundaries of a particular project or program but which may nevertheless be affected by the agency's activities.
- (2) Full consideration of historic properties includes assessment of the widest range of preservation alternatives early in program or project planning should be coordinated to the extent feasible with other kinds of required planning and environmental review.
- (3) Full consideration of historic properties includes consideration of all kinds of effects on those properties: direct effects, indirect or secondary effects, and cumulative effects. Effects may be visual, audible, or atmospheric. Beyond the effects from physical alteration of the resource, itself, effects on historic properties may result from changes in such things as local or regional traffic patterns, land use, and living patterns.
- (4) Full consideration of historic properties includes an obligation to solicit and consider the views of others in planning and carrying out agency preservation activities (See Standard 7 on Consultation).
- (5) The term "consistent with the regulations of the Council" as used in the law and this standard means that an agency's procedures provide for the identification and evaluation of historic properties, assessment of project and program effects on them, and consultation (specifically including consultation with the State Historic Preservation Officer, Tribal Preservation Officer or other Native American groups where appropriate, and other affected parties) to determine appropriate treatment or mitigation procedures, as set forth in the Council's regulations. Agency procedures consistent with the Council's regulations either adhere to and expand upon the process set out in 36 CFR 800, or they include modifications to that process that have been reviewed and approved by the Council. Implementation of procedures consistent

with the Council's regulations means that those procedures are carried out in a manner consistent with the provisions of Standard 8 below.

(6) Full consideration of historic properties includes development of procedures to identify, discourage, and guard against "anticipatory demolition" of historic property by applicants for Federal assistance or license. Agency procedures should include a system for early warning to applicants and potential applicants that anticipatory demolition of historic property may result in the loss of Federal assistance or approval for a proposed undertaking. When an historic property is destroyed or irreparably harmed with the express purpose of circumventing or preordaining the outcome of Section 106 review (e.g., demolition or removal of all or part of the property) prior to application for Federal funding, a Federal license, permit, or loan guarantee, the agency considering that application is required by Section 110(k) to withhold the assistance sought, unless the agency determines that "circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant." Where the agency concludes that anticipatory demolition has occurred, it must consult the Council before determining that justifying circumstances allow for granting such assistance.

(7) Agency preservation procedures for Section 106 compliance must provide for the disposition of Native American, Alaskan, and Hawaiian human remains and cultural items from Federal or tribal land consistent with Section 3(c) of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA). [Section 110(2)(E)(iii)]. The applicable NAGPRA sections on disposition [sections 3(a)(3) and 3(a) & (b)] vest "*ownership and right of control*" according to a hierarchy of relationships to the cultural items. (See NAGPRA (25 U.S.C. 3002(c)) and the Department of Interior's regulations implementing this Act (43 CFR Part 10) for detailed information.)

(8) In those cases where consultation pursuant to Section 106 does not produce a Memorandum of Agreement (MOA) governing how an agency will "take into account" the effects of its undertaking on historic properties, Section 110(l) requires that the final decision(s), reached after consideration of the Council's comments, be made by the agency head and not by any subordinate official, that it be explicit and informed, and that it be a part of the public record available for review.

(9) In accordance with Section 402 of the National Historic Preservation Act Amendments of 1980 (P.L. 96-515) and with Executive Order 12114 (issued January 4, 1979), the agency's preservation program should ensure that, when carrying out work in other countries, the agency will consider the effects of such actions on historic properties, including World Heritage Sites and properties that are eligible for inclusion in the host country's equivalent of the National Register.

(10) The agency's preservation program should ensure that those agency officials, contractors, and other parties responsible for implementing Executive Order 12114

NOVEMBER 20, 1996

have access to personnel with appropriate levels and kinds of professional expertise in historic preservation to identify and assist in the management of such properties.

(11) Efforts to identify and consider effects on historic properties in other countries should be carried out in consultation with the host country's historic preservation authorities, with affected communities and groups, and with relevant professional organizations.

STANDARD 4. An agency must give priority to the use of historic properties in carrying out agency missions.

GUIDELINES:

(1) To the extent feasible, as part of its property management program, the agency should endeavor to retain historic properties, and properties not yet formally evaluated that may meet the criteria for inclusion in the National Register, in their traditional uses, maintaining them in accordance with the Secretary's Standards and Guidelines for the Treatment of Historic Properties.

(2) Where it is no longer feasible to continue the traditional use of a historic property, the agency should consider adaptive use. The agency should consider as wide a range of adaptive use options as is feasible given its own management needs, cost factors, and the needs of preservation. A use that severely damages or destroys a historic property is not consistent with the Section 110(a)(1) requirement to preserve historic properties in accordance with the professional standards established pursuant to Section 101(g) of the Act. Adaptive use proposals must be reviewed in accordance with Section 106 of the Act.

(3) Where modification of a historic property is required to allow it to meet contemporary needs and requirements, the agency should ensure that "The Secretary of the Interior's Standards for the Treatment of Historic Properties" and its accompanying Guidelines are followed. Agencies are authorized and directed by Section 110(a)(1) to carry out (or cause a lessee or concessioner to carry out) whatever preservation work is necessary (e.g., rehabilitation, documentation) in preparation for use.

(4) For the most part, use of historic properties involves the integration of those properties into the activities directly associated with the agency's mission. However, the agency should also be open to the possibility of other uses, such as the use of traditional sacred sites or plant gathering areas by Native Americans, or use of an archeological site as a public interpretive facility.

(5) An agency with historic properties under its jurisdiction and control should maintain an inventory of those properties that notes the current use and condition of

each property. The agency should provide for regular inspection of the properties and an adequate budget for their appropriate maintenance.

(6) Section 110(a)(1) applies not only to historic properties under an agency's ownership or control, but to other historic properties available to an agency. An agency that requires the use of non-federal property is required to give priority to the use of historic properties. In such cases the agency should notify potential private-sector offerors of this priority and, if feasible, offer incentives to help ensure that historic properties will be offered.

(7) Where an agency carries out its mission through the award of grant funds for specific activities, and where these activities will inevitably affect historic properties, the agency should, to the extent feasible, design its grants programs so as to encourage grantees to retain and make appropriate use of historic properties in carrying out grant-funded activities.

(8) Until and unless decisions are made to manage them in some other manner, historic properties should be maintained so that their preservation is ensured through adherence to the "Secretary of the Interior's Standards for the Treatment of Historic Properties."

(9) The relative cost of various management strategies for a historic property, ranging from full rehabilitation and adaptive use to demolition and replacement with a modern building, should be carefully and objectively considered, with reference to the pertinent requirements of Executive Order 11912, as amended, to the pertinent criteria established in GMB Circular A-94, and to the pertinent principles and methods set forth in the National Bureau of Standards Life-Cycle Costing Manual (NBS Handbook 135).

(10) Applicable long- and short-term costs should be carefully considered as part of any cost analysis. It is often the case that the short-term costs of preserving and rehabilitating a historic structure are balanced by long-term savings in maintenance or replacement; on the other hand, failure to perform needed cyclic maintenance may shorten the life of a building and decrease the value of investment in its rehabilitation.

(11) As provided for in Section 111 of the Act, the agency should consider leases, exchanges, and management agreements with other parties as means of providing for the continuing or adaptive use of historic properties.

(12) Surplus properties that are listed in or have been formally determined eligible for the National Register can be transferred to State and local governments for historic preservation purposes through the Historic Surplus Property Program. Additionally, properties or portions of surplus properties may be made available to States or local agencies at no cost for parks and recreation through application to the Federal Lands-to-Parks Program. Contact the NPS' Heritage Preservation Services Division or its

NOVEMBER 20, 1996

Recreation Resources Assistance Division in Washington, D. C., for more information on these programs.

(13) The use of historic properties is not mandated where to do so would greatly increase costs, or where historic properties will not serve the agency's requirements. The agency's responsibility is to balance the needs of the agency mission, the public interest in protecting historic properties, the costs of preservation, and other relevant public interest factors in making management decisions.

(14) Where it is not feasible to maintain a property, or to rehabilitate it for contemporary use, the agency may elect to demolish it, modify it in ways that are inconsistent with the Secretary's "Standards for Rehabilitation," or allow it to deteriorate. However, the decision to act or not act to preserve and maintain historic properties should be an explicit one, reached following appropriate consultation and in relation to other management needs.

(15) Where the agency determines that maintaining or rehabilitating a historic property for contemporary use in accordance with the Secretary's Standards is not feasible, the agency must provide for appropriate recording of the historic property in accordance with Section 110(b) before it is demolished, altered, or allowed to deteriorate.

STANDARD 5. An agency must provide for nomination of historic properties under the agency's jurisdiction or control to the National Register of Historic Places.

GUIDELINES:

(1) The first step in designing a program for the nomination of historic properties is to determine what role nomination will play in the agency's overall preservation program. For example:

(a) An agency that controls relatively few historic properties may find it realistic to nominate them all to the National Register, and then manage them accordingly. An agency with a great many historic properties will need to establish explicit priorities for identifying, nominating, and preserving properties that have not yet been nominated.

(b) Placement on the National Register may help justify budgeting funds for preservation or management of a historic property, so agencies may want to give priority to nominating properties as a first step in upgrading their maintenance and providing for their continued active service in carrying out agency programs. Further, development of National Register-level documentation provides information on the property that will assist the agency in its subsequent property management decisions.

NOVEMBER 20, 1996

(c) An agency with an excellent internal program for identifying and managing historic properties may find that nomination makes little difference to the way properties are managed, and may justifiably give low priority to nomination in favor of emphasizing operation of its internal program, perhaps nominating only those properties that it intends to interpret, commemorate, or otherwise actively manage as sites of public interest.

(d) An agency that regularly transfers property out of Federal ownership may find it useful to give higher priority to nominating properties to be transferred, at the expense of other properties, in those cases where placement on the National Register may make preservation more likely once a property is no longer under Federal management.

(2) The Secretary of the Interior already has in place Standards and Guidelines for registration of historic properties (in *The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation* (48 FR 44726-44728) that details the process that should be followed in formally recognizing historic properties as significant. These Standards and Guidelines, along with the National Register Bulletin #16, *Guidelines for Completing National Register Forms*, provide guidance on completing National Register nomination forms. National Register regulations (36 CFR 60) provide guidance on the nomination process.

STANDARD 6. An agency must give special consideration to impacts on National Historic Landmarks (NHLs).

GUIDELINES:

(1) NHLs are designated by the Secretary under the authority of the Historic Sites Act of 1935. The 1935 Act authorizes the Secretary to identify historic and archaeological sites, buildings, and objects which "*possess exceptional value as commemorating or illustrating the history of the United States.*"

(2) Section 110(f) of the NHPA requires that Federal agencies exercise a higher standard of care when considering undertakings that may directly and adversely affect NHLs. The law requires that agencies, "*to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark.*" In those cases when an agency's undertaking directly and adversely affects an NHL, or when Federal permits, licenses, grants, and other programs and projects under its jurisdiction or carried out by a state or local government pursuant to a Federal delegation or approval so affect an NHL, the agency should consider all prudent and feasible alternatives to avoid an adverse effect on the NHL.

(3) Where such alternatives appear to require undue cost or to compromise the undertaking's goals and objectives, the agency must balance those goals and objectives

with the intent of 110(f). In doing so, the agency should consider:

- (a) The magnitude of the undertaking's harm to the historical, archaeological and cultural qualities of the NHL;
 - (b) The public interest in the NHL and in the undertaking as proposed, and,
 - (c) The effect a mitigation action would have on meeting the goals and objectives of the undertaking.
- (4) The Advisory Council's regulations implementing Section 106 include specific provisions that also implement Section 110(f). These regulations require that the Council must be included in any consultation following a determination by the Federal agency that a Federal or federally assisted undertaking will have an adverse effect on an NHL. The Council must notify the Secretary and may request the Secretary to provide a report to the Council detailing the significance of the affected NHL under Section 213 of the NHPA and recommending measures to avoid, minimize or mitigate adverse effects. The Council shall report the outcome of the Section 106 process to the Secretary and the head of the agency responsible for the undertaking.

STANDARD 7. An agency must provide for consultation with knowledgeable and concerned parties outside the agency.

GUIDELINES:

- (1) Consultation means the process of seeking, discussing, and considering the views of others, and, where feasible, seeking agreement with them on how historic properties should be identified, considered, and managed. Consultation is built upon the exchange of ideas, not simply the provision of information. Whether consulting on a specific project or on broader agency programs, the agency should:
- (a) make its interests and constraints clear at the beginning;
 - (b) make clear any rules, processes, or schedules applicable to the consultation;
 - (c) acknowledge others' interests as legitimate, and seek to understand them;
 - (d) develop and consider a full range of options; and,
 - (e) try to identify solutions that will leave all parties satisfied.
- (2) Consultation should be undertaken early in the planning stage of any Federal action that might affect historic properties. Although time limits may be necessary on specific transactions carried out in the course of consultation (e.g., the time allowed to respond to an inquiry), there should be no hard-and-fast time limit on consultation

overall. Consultation on a specific undertaking should proceed until agreement is reached or until it becomes clear that agreement cannot be reached.

(3) Consultation should not be limited to the consideration of specific projects, but should instead include broader efforts to maintain ongoing communication with all those public and private entities that are interested in or affected by the agency's activities.

(4) While specific consultation requirements and procedures will vary among agencies depending on their missions and programs, the nature of historic properties that might be affected, and other factors, consultation should always include all affected parties. Section 110(a)(2)(D) specifies consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations and the private sector. The appropriate SHPO is an important point of contact. In addition to having a formal role under the Act, the SHPO can assist in identifying other parties with interests, as well as sources of information.

(5) The agency needs to inform other agencies, organizations, and the public in a timely manner about its projects and programs, and about the possibility of impacts on historic resources of interest to them. However, the agency cannot force a group to express its views, or participate in the consultation. These groups also bear a responsibility, once they have been made aware that a Federal agency is interested in their views, to provide them in a suitable format and in a timely fashion.

(6) Agency efforts to inform the public about its projects and programs and about the possibility of impacts on historic resources must be carried out in a manner consistent with the provisions of Section 304 of the Act, which calls for withholding from disclosure to the public information on the location, character, or ownership of a historic resource where such disclosure may:

- (a) cause a significant invasion of privacy;
- (b) risk harm to the historic resource; or
- (c) impede the use of a traditional religious site by practitioners.

(7) Inclusion of Indian tribes and Native Hawaiian organizations in the consultation process is imperative and is specifically mandated by the Act:

- (a) properties with traditional religious and cultural importance to Native American and Native Hawaiian groups may be eligible for the National Register; such properties must be considered, and the appropriate Native American and/or Native Hawaiian groups must be consulted in project and program planning through the Section 106 review process (see NHPA Sec. 101(d)(6)(A&B);

(b) Section 101(d)(2) of the Act provides that Indian tribes may assume State Historic Preservation Officer responsibilities on tribal lands, when approved to do so by the Secretary of the Interior. In those cases where a tribe has assumed such responsibilities on tribal lands, Federal agencies must consult with the tribe instead of the SHPO, in order to meet agency responsibilities for consultation pursuant to the Act;

(c) the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) establishes consultation requirements that may affect or be affected by consultation pursuant to Section 106 of the NHPA concerning activities on Federal and Tribal lands that could affect human remains and cultural items;

(d) Section 110 requires that an agency's efforts to comply with Section 106 must also be consistent with the requirements of Section 3(c) of NAGPRA concerning the disposition of human remains and Native American cultural items from Federal and Tribal lands.

(8) Where those consulted do not routinely or customarily participate in traditional governmental means of consultation (e.g., through public meetings, exchanges of correspondence), reasonable efforts should be made to accommodate their cultural values and modes of communication.

STANDARD 8. An agency preservation program must be coordinated by a qualified Federal Preservation Officer (FPO) situated within the agency's administrative structure so as to ensure an effective role in agency decisions concerning planning, project administration, resource management, budgeting, and performance appraisals. The agency must provide sufficient resources and controls to ensure the effective implementation of its preservation program.

GUIDELINES:

(1) The agency historic preservation program must be an effective and efficient vehicle through which the agency head can meet his or her statutory responsibilities for the preservation of historic properties. The program is not simply intended to meet agency Section 106 responsibilities to "take into account" the effects of its undertakings on historic properties. The program described in Section 110(a)(2) is an agency-wide approach to achieving the goals set forth in the NHPA. It should be fully integrated into both the general and specific operating procedures of the agency.

(2) The preservation program should interact with the agency's budgetary and financial management systems to (a) ensure that historic preservation issues are considered before budgetary decisions are made that foreclose historic preservation options, and (b) ensure that the historic preservation program itself is adequately funded to enable it to perform its functions.

(3) To avoid needless duplication of effort and increased workload in developing and implementing its program, the agency should carefully review and consider using those existing policies, procedures, approaches and standards that are government-wide, i.e., applicable to all preservation programs, and develop only those that need to be agency-specific. Preservation programs can be expected to differ based on the extent to which:

- (a) agencies manage, own, or exercise control over historic properties;
- (b) historic properties play a significant role in agency activities through active use (e.g., for recreation, interpretation, public access/use, transportation, office space, etc.);
- (c) agencies are engaged in public education/interpretation, or multiple-use resource management;
- (d) agencies are in a position to influence non-Federal actions affecting historic properties.

(4) The agency position responsible for coordinating the preservation program is the Federal Preservation Officer (FPO) required of all agencies by §110(c) of the NHPA (unless specifically exempted under §214 of the NHPA). An FPO may have other agency duties in addition to historic preservation coordination, depending on the magnitude and degree of the agency's historic preservation activities and responsibilities.

(5) Agency officials designated as Federal Preservation Officers should have substantial experience administering Federal historic preservation activities and/or specifically assigned staff under their supervision who have such experience. In addition, Section 112 of the NHPA as amended in 1992 requires that agency personnel responsible for historic preservation, and their contractors, meet applicable professional and qualifications standards as developed by the Office of Personnel Management in consultation with the National Park Service.

(6) FPOs should have sufficient agency-wide authority, staff, and other resources to carry out their Section 110 responsibilities effectively. Agency administrative systems should ensure that the FPO can review all agency programs and activities and interact with the agency's planning and project management systems in such a way as to influence decisions potentially affecting historic resources. The FPO should have sufficient authority and the agency should have sufficient control systems to ensure that decisions made pursuant to Section 106 and Section 110 about the treatment of such resources are in fact carried out.

(7) Regional and local preservation officials: In agencies where significant preservation responsibilities rest with regional or field offices, or Federal facilities or

installations, the agency head should also appoint qualified preservation officials at those levels. Such officials should ensure that their actions and conduct of historic preservation activities are coordinated with, and consistent with, those of the central office FPO for that agency.

(8) The agency should ensure that its personnel management system identifies those personnel with preservation responsibilities, includes such responsibilities in their position descriptions and performance elements and standards, and appropriately rewards quality performance. In addition, the agency should provide for ongoing training in historic preservation for all agency personnel with preservation responsibilities.

(9) Agency funding decisions for historic preservation work should be based on a determination of the prudent level of investment for a specific undertaking. That determination, in turn, should acknowledge that preservation costs are eligible project costs on an equal footing with other planning, design, construction, environmental protection, and mitigation needs and requirements. Similarly, the cost of caring for, documenting, and otherwise preserving artifacts, records, and remains related to historic properties is an eligible project cost. The agency may contract with an SHPO, another Federal agency, or other public or private organization as appropriate to assist it in carrying out the agency's historic preservation work.

(10) Where preservation activity is a condition of obtaining a Federal license or permit, or Federal approval, or is subject to a delegation of authority by a Federal agency, the recipient may be expected to incur reasonable preservation costs. Because it is difficult to establish fair standards that would be applicable in all cases, "reasonable costs" should not be determined using inflexible criteria, such as a flat fee or a standard percentage of a budget, but rather should be determined on a case-by-case basis.

(11) An efficient preservation program should allow the agency to do more than simply meet its Section 110 and 106 responsibilities. In order to eliminate duplicative effort and assist in agency planning, the preservation program should be coordinated with actions the agency takes to meet the requirements of other relevant and related Federal statutes (e.g., NAGPRA, the Archaeological Resources Protection Act [ARPA], the American Indian Religious Freedom Act [AIRFA], and the National Environmental Policy Act [NEPA], etc.) in a comprehensive, anticipatory manner.

DEFINITIONS

The Act (or NHPA) means the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470 *et seq.*

Advisory Council means the agency, fully titled the Advisory Council on Historic Preservation, established pursuant to section 201 of Title II of the NHPA, that is to be afforded a reasonable opportunity under Sections 106 and 110(f) of the NHPA to comment with regard to proposed Federal, federally licensed, assisted, approved, or delegated undertakings; that reviews Federal programs pursuant to Section 202(a)(6) of the NHPA; and with whose regulations outlining the procedures for complying with the requirements of Section 106 of the NHPA ("Protection of Historic Properties," found at 36 CFR Part 800) in accordance with Section 110(a)(2)(E)(i), other Federal agencies procedures for compliance with Section 106 must be consistent.

Agency Head means the individual Departmental Secretary, Executive Director or Administrator of an agency, as defined in the Council's regulations (36 CFR Part 800).

Cultural items is defined in the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA, 25 U.S.C 3002(c)). It includes human remains; associated and unassociated funerary objects (consisting of items intentionally placed with the body in a grave, including those not in possession of a Federal agency); sacred objects, ceremonial objects important to the practice of Native American traditional religions; and objects of cultural patrimony, those items having historical, traditional, or cultural importance to Indian tribes themselves. For a complete definition see Section 2(3)(A)-(D) of NAGPRA, and the Department of Interior's regulations implementing the provisions of the Act at 43 CFR Part 10.

Historic property or historic resource means any prehistoric or historic district, site, building, structure, landscape or object included in, or eligible for inclusion on the National Register, including artifacts, records, and material remains related to such a property or resource. The term has been clarified to include "properties of traditional religious and cultural importance" (formerly "traditional cultural properties") which are eligible for or listed on the National Register because of their association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community.

Historic resource (see definition for "historic property").

NOVEMBER 20, 1996

Indian tribe or tribe is defined at Section 301(4) of the NHPA and 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. The Secretary of the Interior is responsible for determining an Indian tribe's eligibility for those special programs and services.

Memorandum of Agreement means the document that records the terms and conditions which have been agreed upon to resolve the adverse effects of an undertaking upon historic properties.

National Register means the list of districts, sites, buildings, structures and objects significant in American history, architecture, archeology, engineering, and culture established under section 101 of the NHPA and maintained by the Secretary of the Interior and fully titled the "National Register of Historic Places."

Native Hawaiian is defined in the NHPA at Section 301(17) and 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.

Native Hawaiian organization as defined at Section 301(18) of the NHPA means any organization which--

- (A) serves and represents the interests of Native Hawaiians;
- (B) has as a primary and stated purpose the provision of services to Native Hawaiians;
- and
- (C) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians.

The term includes, but is not limited to, the Office of Hawaiian Affairs of the State of Hawaii and *Hui Malama I Na Kapuna O Hawai'i Nei*, an organization incorporated under the laws of the State of Hawaii.

Preservation or historic preservation as defined in the NHPA at Section 301(8) includes identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance research, interpretation, conservation, and education and training regarding the foregoing activities or any combination of the foregoing activities.

Secretary means the Secretary of the Interior acting through the Director of the National Park Service, except where otherwise specified.

NOVEMBER 20, 1996

Secretary's Standards means the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716), the project and program standards and guidelines for implementing Section 110. They are technical guidance concerning archeological and historic preservation activities and methods. The complete Secretary's Standards (48 FR 44716) currently address each of the following activities: Preservation Planning, Identification, Evaluation, Registration, Historical Documentation, Architectural and Engineering Documentation, Archeological Documentation, and Treatment of Historic Properties (including Rehabilitation).

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

Traditional Cultural Property is defined as a property that is eligible for inclusion in the National Register of Historic Places because of its association with cultural practices or beliefs of a living community that (a) are rooted in that community's history, and (b) are important in maintaining the continuing cultural identity of the community. Readers should refer to *National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties* (available from the National Park Service) for more information.

Tribal lands is defined at Section 301(14) of the NHPA and means--

- (A) all lands within the exterior boundaries of any Indian reservation; and
- (B) all dependent Indian communities.

Undertaking as defined in the NHPA at Section 301(7) means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including--

- (A) those carried out by or on behalf of the agency;
- (B) those carried out with Federal financial assistance;
- (C) those requiring a Federal permit, license, or approval; and
- (D) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

APPENDIX A

Section 110 of the National Historic Preservation Act (16 U.S.C. 470h-2)

(a)(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(g), any preservation, as may be necessary to carry out this section.

(2) Each Federal agency shall establish (unless exempted pursuant to section 214), in consultation with the Secretary [of the Interior], a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure --

(A) that historic properties under the jurisdiction or control of the agency are identified, evaluated, and nominated to the National Register;

(B) that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archeological, architectural, and cultural values in compliance with section 106 and gives special consideration to the preservation of such values in the case of properties designated as having National significance;

(C) that the preservation of properties not under the jurisdiction or control of the agency, but subject to be potentially affected by agency actions are given full consideration in planning;

(D) that the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector; and

(E) that the agency's procedures for compliance with section 106 --

(i) are consistent with regulations issued by the [Advisory] Council [on Historic Preservation] pursuant to section 211;

(ii) provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and

NOVEMBER 20, 1996

implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and

(iii) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)).

(b) Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, a historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with section 101(a), in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

(c) The head of each Federal agency shall, unless exempted under section 214, designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this Act. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under Section 101(h).

(d) Consistent with the agency's mission and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act.

(e) The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

(f) Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

(g) Each Federal agency may include the costs of preservation activities of such agency under this Act as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this Act, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit.

NOVEMBER 20, 1996

(h) *The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts not to exceed \$1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the president of the United States to any citizen of the United States recommended for such award by the Secretary.*

(i) *Nothing in this Act shall be construed to require the preparation of an environmental impact statement where such statement would not otherwise be required under the National Environmental Policy Act of 1969, and nothing in this Act shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.*

(j) *The Secretary shall promulgate regulations under which the requirements of this section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.*

(k) *Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of section 106, has intentionally significantly adversely affected a historic property to which the grant would relate, or having the legal power to prevent it, 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.*

(l) *With respect to any undertaking subject to section 106 which adversely affects any property included in or eligible for inclusion in the National Register, and for which a Federal agency has not entered into an agreement with the Council, the head of such agency shall document any decision made pursuant to section 106. The head of such agency may not delegate his or her responsibilities pursuant to such section. Where a section 106 memorandum of agreement has been executed with respect to an undertaking, such memorandum shall govern the undertaking and all of its parts.*

APPENDIX B

Purposes of the National Historic Preservation Act

Section 110(d) of the National Historic Preservation Act (the Act) calls on all Federal agencies, consistent with their mission and mandates, to carry out their activities in accordance with the purposes of the Act and to consider programs and projects that will further the purposes of the Act. The purposes of the Act are set forth in sections 1 and 2 of the Act. These sections are directly germane to all Federal preservation programs:

§ 1(b)(2): the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;

§ 1(b)(4): the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;

§ 1(b)(6): the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of federal and federally assisted projects and will assist economic growth and development, and

§ 1(b)(7): although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

Section 2: *It shall be the policy of the Federal Government, in cooperation with other nations and in partnership with the States, local governments, Indian tribes, and private organizations and individuals to--*

(1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;

(2) provide leadership in the preservation of the prehistoric and historic resources of the United States and of the international community of nations and in the administration of the national preservation program in partnership with the States, Indian tribes, Native Hawaiians, and local governments;

(3) administer federally owned, administered, or controlled prehistoric and

NOVEMBER 20, 1996

historic resources in a spirit of stewardship for the inspiration and benefit of present and future generations;

(4) contribute to the preservation of nonfederally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means;

(5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and

(6) assist State and local governments, Indian tribes and Native Hawaiian organizations and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

REFERENCES, GUIDANCE DOCUMENTS, AND FURTHER INFORMATION

I. GENERAL REFERENCES AND INFORMATION:

National Historic Preservation Act of 1966, as amended, 3rd. ed. Available from the Advisory Council on Historic Preservation, this version presents the up-to-date text of the National Historic Preservation Act of 1966, including amendments to the act that were passed in October 1992. Like the 1980 amendments, the current legislation expands the national preservation program and introduces new preservation duties for the Federal Government, while maintaining the basic structure and partnerships that have been in place since 1966. Annotations are provided to assist the reader in locating specific references.

Identification of Historic Properties: A Decisionmaking Guide for Managers, a 1988 publication of the Advisory Council on Historic Preservation and the National Park Service.

The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, Published in the *Federal Register* on September 29, 1983, in Volume 48, Number 190, pages 44738-44716.

National Register of Historic Places Bulletin Series. This is a series of publications about comprehensive planning, survey of cultural resources, and registration in the National Register. An annotated list of the Bulletins is available from the National Park Service. Bulletins are also listed in National Register Bulletin Number 25, Directory of Technical Assistance.

II. SPECIFIC REFERENCES AND INFORMATION:

1) Survey and Identification

The Secretary of the Interior's Standards and Guidelines for Identification and Evaluation, 48 FR 44720-44726.

Identification of Historic Properties: A Decisionmaking Guide for Managers, a 1988 publication of the Council and the National Park Service.

The National Register of Historic Places. Names and addresses of properties listed in, or determined eligible for, the National Register is published in the Federal Register. A cumulative list of properties was published in its entirety in the Federal Register, February 6, 1979. Annual updates of properties are published each year, usually during February or March. More detailed data are available from the Keeper of the National Register (National

NOVEMBER 20, 1996

Park Service) or from the appropriate SHPO.

Guidelines for Local Surveys, National Register Bulletin Number 24. This publication provides guidance to communities, organizations, Federal and State agencies, and individuals interested in undertaking surveys of historic resources.

National Register Bulletin #15, Guidelines for Applying the National Register Criteria for Evaluation. This bulletin discusses in-depth the National Register Criteria and how they are used in evaluating properties that may be eligible for the National Register.

Archeological Survey: Methods and Use. Designed for non-archaeologists, this manual addresses the methods and objectives of archeological survey. For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

2) National Register Nomination and Documentation

National Register Bulletin #16, Guidelines for Completing National Register Forms. This Bulletin provides step by step guidance on completing National Register nomination forms and includes discussion of evaluation issues such as integrity and significance.

The Secretary of the Interior's Standards and Guidelines for Registration, 48 FR 44726-44728.

The Secretary of the Interior's Standards and Guidelines for Historical Documentation, 48 FR 44728-44730.

The Secretary of the Interior's Standards and Guidelines for Architectural and Engineering Documentation, 48 FR 44730-44734.

The Secretary of the Interior's Standards and Guidelines for Archeological Documentation, 48 FR 44734-44737.

36 CFR Part 60, National Register of Historic Places. This regulation describes the procedures for nominations to the National Register.

3) Preservation Planning

The Secretary of the Interior's Standards and Guidelines for Preservation Projects. These Standards and Guidelines, codified in 36 CFR Part 68, provide advice about treatments of historic properties.

The Secretary of the Interior's Standards and Guidelines for Preservation Planning, 48 FR 44716-44720.

NOVEMBER 20, 1996

Guidelines for Local Surveys, National Register Bulletin Number 24. This publication provides guidance to communities, organizations, Federal and State agencies, and individuals interested in undertaking surveys of historic resources.

The National Historic Landmarks Program Theme Study as a Preservation Planning Tool. Technical Brief No. 10, available from the National Park Service.

4) Consultation

Public Participation in Section 106 Review: A Guide for Agency Officials. This guidance document helps agencies effectively involve the public in the Section 106 review process. The publication defines public participation principles, criteria for evaluating an existing public participation program, methods of public participation, and documentation of public participation efforts. Special consideration is given to the role of interested parties in Section 106 review. Issued by the Advisory Council on Historic Preservation in 1989. See further references under "Section 106 Review" below.

Cultural Resource Management (NPS-28), Release 4, 1994. See especially Chapter 10: Management of Ethnographic Resources.

Intermountain Field Area Consultation Guideline and Directory, available from the following National Park Service offices: Ethnographer, Colorado System Support Office; American Indian Liaison Office, Southwest System Support Office; Indian Affairs Coordinator, Rocky Mountain System Support Office.

See also under Section 106 review below.

5) Management, Maintenance, and Use of Historic Properties

The Secretary of the Interior's Standards for the Treatment of Historic Properties and accompanying Guidelines, include the Standards for Preservation, Rehabilitation, Restoration, and Reconstruction.

36 CFR Part 79, Curation of Federally Owned and Administered Archeological Collections. These regulations implement Federal curatorial requirements of the NHPA and the Archaeological Resources Protection Act.

Respectful Rehabilitation: Answers to Your Questions on Historic Buildings. Available from the National Park Service.

National Park Service Preservation Briefs. This is a series of publications explaining recommended methods and approaches for rehabilitating historic buildings in a manner

NOVEMBER 20, 1996

consistent with their historical character (catalog listing Briefs and Government Printing Office stock numbers available from the Heritage Preservation Services Division of the National Park Service).

National Park Service Preservation Case Studies. These publications provide practical, solution-oriented information concerning courses of action taken in the preservation of buildings (catalog listing Briefs and Government Printing Office stock numbers available from the Heritage Preservation Services Division of the National Park Service).

National Park Service Technical Reports. Each publication in this series addresses in detail problems confronted by architects, engineers, government officials, and other technicians involved in the preservation of historic buildings (catalog listing Briefs and Government Printing Office stock numbers available from the Heritage Preservation Services Division of the National Park Service).

National Park Service Preservation Tech Notes. Each publication in this series identifies a specific preservation problem and describes actions taken to resolve it consistent with the Secretary of the Interior's Standards and Guidelines for Preservation Projects (catalog listing Briefs and Government Printing Office stock numbers available from the Heritage Preservation Services Division of the National Park Service).

The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, Professional Qualifications Standards, 48 FR 44738.

36 CFR Part 18, Leases and Exchanges of Historic Property. These regulations govern National Park Service leases and exchanges provided for in Section 111 of the NHPA.

Federal Archeological Contracting: Utilizing the Competitive Procurement Process. Technical Brief No. 7, available from the National Park Service.

41 CFR Part 101-47, Utilization and Disposal of Real Property (refer to subsection 101-47.308-3).

40 USC 484 (k)(3), Federal Property and Administrative Services Act of 1949, as amended.

Federal Register Notice (50 FR 7622), Treatment of Historic Properties Under Emergency Conditions Pursuant to Section 106 of the National Historic Preservation Act. The Advisory Council provides guidance in this notice concerning the application of Section 106 during emergencies.

Balancing Historic Preservation Needs with the Operation of Highly Technical or Scientific Facilities Written in response to Congressional request, this report considers the appropriate role of historic preservation in the operation and management of highly technical and scientific facilities such as Yerkes Observatory and the Marshall Spaceflight Center. It

NOVEMBER 20, 1996

identifies ways in which preservation needs may be reconciled with ongoing operational needs of scientific and technological institutions and affirms the flexibility of Council regulations and the Section 106 review process in accommodating these needs. Available from the Advisory Council.

Fire Safety Retrofitting in Historic Buildings, available from the Advisory Council. This publication gives specific examples of methods for retrofitting fire safety systems into historic buildings, which will ensure public safety and protection of property, as well as avoid damage to distinctive historic features. The photographs provided throughout the text of such sites as Blair House, the Pension Building (National Building Museum), and the Court of Military Appeals offer excellent examples of the methods discussed in the text.

Preserving the Past and Making it Accessible for People with Disabilities. Available from the National Park Service, this pamphlet discusses the requirements of the Americans With Disabilities Act and how handicap access can be achieved in historic properties.

Abandoned Shipwreck Act Final Guidelines. 55 FR 50116-50145, 55 FR 51528, and 56 FR 7875.

6) Section 106 Review

36 CFR Part 800, Protection of Historic Properties. These regulations, issued by the Advisory Council, implement the requirement in Section 106 of the NHPA that Federal agencies consider the effects of their undertakings on historic properties.

A Five-Minute Look at Section 106 Review Fact Sheet. A summary of the Section 106 review process, which was established under 36 CFR Part 800. Available from the Council.

Section 106, Step-by-Step. This booklet describes the procedures to be followed in complying with the requirement of Section 106 of the NHPA and implementing regulations 36 CFR Part 800. Available from the Council.

Preparing Agreement Documents. Published by the Council, this booklet describes suggested mitigation measures to be used in avoiding or minimizing adverse effects on historic properties.

Treatment of Archeological Properties. This publication, addressing the broad range of treatments available for archeological properties, was prepared by the Advisory Council on Historic Preservation.

Consulting About Archeology Under Section 106. This fact sheet assists agencies and individuals requiring guidance on how the Section 106 review process addresses a variety of archeological issues. Available from the Council.

NOVEMBER 20, 1996

Public Participation in Section 106 Review: A Guide for Agency Officials. This guidance document helps agencies effectively involve the public in the Section 106 review process. The publication defines public participation principles, criteria for evaluating an existing public participation program, methods of public participation, and documentation of public participation efforts. Available from the Council.

The Council also has several other Fact Sheets on public participation, including:

Section 106 Participation by Indian Tribes and other Native Americans; Section 106 Participation by Applicants for and Recipients of Federal Assistance, Permits, and Licenses; Section 106 Participation by Local Governments, Section 106 Participation by State Historic Preservation Officers

State Historic Preservation Officers and Deputies Fact Sheet. Lists the name, address, and telephone number of the State Historic Preservation Officer (SHPO) and deputy for each State and territory.

Federal Agency Preservation Officers and Contacts Fact Sheet. Lists persons designated as their agencies' preservation officers, per Section 110(c) of the National Historic Preservation Act, and others who serve as agency contacts for preservation activities.

7) National Historic Landmarks

36 CFR Part 65 contains the regulations for the Department of the Interior's National Historic Landmarks Program.

Catalog of National Historic Landmarks, 1987. Available from the National Park Service.

The National Historic Landmarks Program Theme Study as a Preservation Planning Tool. Technical Brief No. 10, available from the National Park Service.

The National Historic Landmarks Program: Common Questions and Answers. Available

DRAFT

33

NOVEMBER 20, 1996

from the National Park Service.

<><><><><><><><><><>

Copies of the National Park Service's publications listed above are available from the National Park Service, Heritage Preservation Services Division, P.O. Box 37127, Washington, DC 20013-7127.

Copies of the Council's publications are available from the Advisory Council on Historic Preservation, Office of Education and Preservation Assistance, 1100 Pennsylvania Avenue, Room 809, Washington, DC 20004.

JAN 21 1997

Mr. H. Bryan Mitchell
National Park Service
Heritage Preservation Services
P. O. Box 37127, MS 2255
Washington, DC 20013-7127

Dear Mr. Mitchell:

I am writing in reference to H32(2255), which transmitted Mr. de Teel Patterson Tiller's request for review and comment by January 17, 1997, of the draft proposed revisions to the Secretary of Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs. While we appreciate the opportunity to comment on these draft guidelines, we do not have any additional substantive comments to provide at this time.

If you have any questions concerning this correspondence, please contact me or Rosetta Virgilio of my staff at 301-415-3340.

Sincerely,

Original Signed By
RICHARD L. BANGART
Richard L. Bangart, Director
Office of State Programs

cc: Mr. de Teel Patterson Tiller
Acting Program Manager
Heritage Preservation Services

Distribution:

DIR RF (6S296)
RLBangart
PLohaus
SDroggitis
RVirgilio
FXCameron
Historic Preservation File
National Park Service File

DCD (SP 02)
PDR (YES X NO)

DOCUMENT NAME: G:\ROV\MITCHELL.NPS

*See E-Mail.

To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	OSP	<input checked="" type="checkbox"/> E SD OSP	<input type="checkbox"/> OSP ADD	<input type="checkbox"/> OELD	<input type="checkbox"/> OSP:D
NAME	RVirgilio:ndb	SCDroggitis	PHLohaus	FXCameron	RLBangart
DATE	01/14/97	01/14/97	01/15/97	01/15/97*	01/21/97

OSP FILE CODE: SP-H-2; SP-N-2

Cross-Ref. Copy

NRC FILE CENTER COPY

From: Francis Cameron
To: WNP9(ROV)
Date: 1/15/97 4:40pm
Subject: RESPONSE RE: PROPOSED FEDERAL STANDARDS & GUIDELINES FOR
NHPA -Reply

looks fine



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

January 21, 1997

Mr. H. Bryan Mitchell
National Park Service
Heritage Preservation Services
P. O. Box 37127, MS 2255
Washington, DC 20013-7127

Dear Mr. Mitchell:

I am writing in reference to H32(2255), which transmitted Mr. de Teel Patterson Tiller's request for review and comment by January 17, 1997, of the draft proposed revisions to the Secretary of Interior's Standards and Guidelines for Federal Agency Historic Preservation Programs. While we appreciate the opportunity to comment on these draft guidelines, we do not have any additional substantive comments to provide at this time.

If you have any questions concerning this correspondence, please contact me or Rosetta Virgilio of my staff at 301-415-3340.

Sincerely,

Richard L. Bangart
Richard L. Bangart, Director
Office of State Programs

cc: Mr. de Teel Patterson Tiller
Act'ng Program Manager
Heritage Preservation Services



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

EXECUTIVE TASK MANAGEMENT SYSTEM

<<< PRINT SCREEN UPDATE FORM >>>

RLB2
11/29
TASK # - 6S296

DATE- 11/26/96

MAIL CTRL. - 1996

TASK STARTED - 11/26/96

TASK DUE - 01/15/97

TASK COMPLETED - / /

TASK DESCRIPTION - STANDARDS & GUIDELINES F/FEDERAL AGENCY HISTORIC PRE-
SERVATION PROGRAMS FOR REVIEW AND COMMENTS

REQUESTING OFF. - DOI

REQUESTER - MR. TILLER

WITS -

0 FYP - N

PROG. -

PERSON -

STAFF LEAD -

PROG. AREA -

PROJECT STATUS -

DOI DUE DATE: 1/17/97

PLANNED ACC. - N

LEVEL CODE - 1

CC: RLB2
PHL

Assigned to: SCD/ROV

Please schedule a meeting
with Paul and me to discuss
this action and other related
issues.

- 1) Does NRC have a formal
program/plan?
- 2) Are NHPA issues appropriately
addressed in the Action Point
draft EIS?

RLB2
11/29/96