0930.03 Review and Compliance in Historic Preservation

Issued: January 1, 1994
Revised: April 12, 2012

PURPOSE

To ensure agency compliance with federal and state historic preservation responsibilities, and that federally-assisted programs which an agency administers have taken into account the effects that the program or project may have on cultural resources (any prehistoric or historic district, site, building, structure or object included in or eligible for inclusion in the National Register of Historic Places maintained by the Secretary of the Interior).

APPLICATION

Executive Branch Departments and Sub-units.

CONTACT AGENCY

Michigan State Housing Development Authority (MSHDA)
State Historic Preservation Office (SHPO)

Telephone: 517-335-2721

Fax: 517-335-0348

SUMMARY

Federal law and regulations require that administrators of all federal or federally-assisted undertakings take into account the effect of their undertakings on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register of Historic Places. The SHPO is a mandatory consulting party in this process and consultation with the SHPO must be initiated at the inception of project planning. Federal law requires that the project may not proceed to the construction phase until the consultation process with the SHPO has concluded. The agency also has additional responsibilities to consult with the public, Native American Tribes and potential interested parties regarding the proposed project.

The responsibility for compliance often is delegated to state-level administrators of federally-funded programs. For some types of programs (e.g., wastewater treatment facilities) consultation may be initiated by project consultants or state employees. Responsibility for compliance ultimately rests with the relevant federal agency or its delegated authority and cannot be transferred.

In the project review stage, an agency initiates consultation with the SHPO. Project submissions must describe the project, identify an area of the project's potential effects (APE) on cultural resources, identify cultural resources within the APE and indicate the effects of the project on cultural resources (i.e., the finding of effect). SHPO staff review the information submitted and respond by either confirming or disputing the finding of effect. In the absence of reliable data, the SHPO may request additional information from the agency and/or recommend that a cultural

resource survey be conducted. It is the agency's responsibility to see that all requested information is obtained and provided to the SHPO.

If the SHPO concurs that no cultural resources are affected by the proposed project or if the project will have no adverse effect upon cultural resources, then consultation with the SHPO is complete and the proposed project may begin. If the project will have an adverse effect upon cultural resources, then the agency must continue to consult with the SHPO and demonstrate that it has taken all reasonable steps to avoid or minimize adverse effects. When adverse effects cannot be avoided, the agency must continue to consult with the SHPO, the public, tribes and interested parties to identify and reach agreement on ways to mitigate the adverse effects of the project. The consultation of these negotiations is memorialized in a Memorandum of Agreement (MOA). Once signed by all parties, the project may proceed in accordance with the provisions in the MOA.

APPLICABLE FORMS

SHPO Application for Section 106 Review and see SHPO website for more information.

PROCEDURES

General Information

- Due to the numerous possibilities present in any given program/project location, if the appropriate procedures are followed, the process outlined below is not complete. The majority of projects reviewed by the SHPO do not result in impacts to cultural resources.

Agency

- Submits required project information to the SHPO.

SHPO

- Reviews the project internally.
    - Determines whether or not more information is needed and more information may be requested.
    - If the SHPO concurs with a finding of no historic properties affected or no adverse effect, responds in writing with this information and no further consultation with the SHPO is required. The SHPO is required to issue its opinion within 30 days to an adequately documented finding of effect.

Agency

- Responds to the SHPO's request for additional information. It may be necessary to contract a consultant to conduct and document additional research.

SHPO

- Reviews the agency research and forwards to the agency an opinion on the National Register eligibility of any cultural resources discovered by the agency.

SHPO, Agency, Federal Funding Source, Advisory Council on Historic Preservation, Tribes, Interested Parties (The Parties)

- If the SHPO concurs with the agency's finding that the project will have an adverse effect upon cultural resources or if it is the SHPO's opinion that the project will have an adverse effect upon cultural resources, the consultation process continues to seek ways to avoid, minimize or mitigate adverse effects.
- If adverse effects cannot be avoided, the SHPO, agency and other parties continue to consult to identify means to mitigate the adverse effects.
- The Parties conclude their negotiations by executing an MOA outlining the agreed-upon mitigation measures.

Agency

- Seeks ways to avoid or minimize adverse effects to cultural resources.
- Carefully documents why adverse effects cannot be avoided and presents information to the SHPO in the form of a case study.
- Executes MOA.
- Completes agreed on mitigation.

SHPO

- Consults with agency and other required parties.
- Executes MOA.

Agency

- Proceeds with project in a manner that avoids adverse effects to cultural resources or is in accordance with an executive MOA.

***