

November 25, 2003

John M. Fowler, Executive Director  
Advisory Council of Historic Preservation  
1100 Pennsylvania Avenue, NW, Suite 809  
Washington, D.C. 20004

Mr. Fowler:

This is in response to your September 30, 2003 e-mail request for comments on the proposed amendments to the regulations setting forth how Federal agencies take into account the effects of their undertakings on historic properties.

The U.S. Nuclear Regulatory Commission (NRC) does not have Federal land management responsibilities and, therefore, does not directly engage in maintaining or restoring historic properties. However, NRC and Agreement State licensees are required to take the mitigative measures necessary to protect such properties. As a regulatory agency, NRC does not incur any direct costs associated with the protection or enhancement of historic resources.

Nevertheless, we would like to provide the following comment:

- 36 CFR 800.8(c)(3) discusses the use of the NEPA process for Section 106 purposes and resolutions of a consulting party's objection that preparation of the EA, DEIS or EIS has not met certain standards including identifying consulting parties, identifying historic properties, assessing any effects, and developing consultation party alternatives. Furthermore, it states that the "Council shall notify the Agency Official either that it agrees with the objection, in which case the Agency Official shall enter into consultation in accordance with 800.6(b)(2)...". This appears to contradict the September 2001 district court decision that the asserted power of the Council to reverse Federal agency determinations of "No Historic Properties Affected" and "No Adverse Effect" exceeded the Council's legal authority under the Act. Previously, the Council's objection to a "No Adverse Effect" finding required the Federal agency to proceed to the next step in the process, where it would attempt to resolve the adverse effects. It may be appropriate to revise or delete the 800.8(c)(3) phrase, "the Agency Official shall enter into consultation in accordance with 800.6(b)(2) or...."

We would like to express our appreciation for the opportunity to comment.

If you have any questions please do not hesitate to contact me or Mr. Osiris Siurano of my staff. He can be reached at 301-415-2307 or via e-mail at Internet: osp@nrc.gov.

Sincerely,

*/RA/*

Paul H. Lohaus, Director  
Office of State and Tribal Programs

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RVirgilio

**\*See previous concurrence**

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