

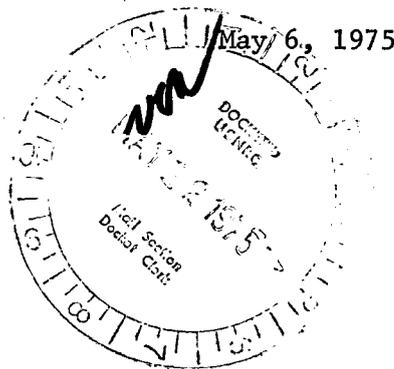
**Advisory Council
On Historic Preservation**

1522 K Street N.W. Suite 430
Washington D.C. 20005

Regulatory

The Cy.

Mr. Daniel R. Muller
Acting Director for Environmental
Projects
Division of Reactor Licensing
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555



Dear Mr. Muller:

The Consolidated Edison Company of New York, Inc. (Con Edison) has forwarded to the Advisory Council a copy of its report "Economic and Environmental Impacts of Alternative Closed-Cycle Cooling Systems for Indian Point Unit No. 2," submitted to the Atomic Energy Commission (AEC) in accordance with paragraph 2.E(2) of Facility Operating License DPR-26. From it we have learned that forty properties included in the National Register of Historic Places and located in Westchester, Rockland and Orange Counties, New York, may be affected by the construction of a closed-cycle cooling system for Indian Point Nuclear Generating Unit #2. Our own analysis would indicate that Van Cortlandt Manor, Old St. Peter's Church, and Lyndhurst, all in Westchester County; Stony Point Battlefield in Rockland County; Palisades Interstate Park in Orange and Rockland Counties; and Fort Montgomery, Fort Montgomery Site, Haskell House and the U.S. Military Academy in Orange County will be the most affected. Con Edison's report does not consider the possible effects of the cooling systems on cultural resources in Putnam County, which is immediately north of Westchester County and probably within range of the proposed tower.

The Council understands that the Nuclear Regulatory Commission (NRC) is involved in this undertaking through its assumed regulatory functions of the AEC. A copy of the pertinent portions of Volume I of Con Edison's study is enclosed.

On the basis of this information, the Council requests that the NRC investigate this matter to determine whether Section 106 of the National Historic Preservation Act and Section 1(3) of Executive Order 11593 are applicable. Steps to determine this applicability are set forth in Section 800.4 of the Council's "Procedures for the Protection of Historic and Cultural Properties" (copy enclosed). A copy of the Council's procedures, along with a flow chart that describes them graphically, is enclosed for your convenience.

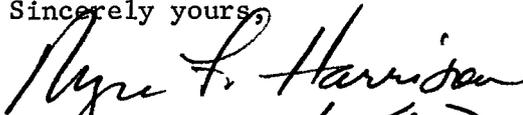
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The Council requests that the NRC report the results of its investigation to the Council at the earliest opportunity. If you have further questions or require any assistance, please contact Myra Harrison of the Council staff at 202-254-3380.

The Council appreciates your cooperation in this matter.

Sincerely yours,



John D. McDermott *for J.D.*
Director, Office of Review and
Compliance

Enclosure

6.5 INDIAN POINT SITE PLANNING AND REGIONAL LAND USE IMPACTS

6.5.1 Conclusions

A natural draft wet cooling tower at the Indian Point site would have a major visual and aesthetic impact on surrounding areas. The tower structure itself has a simple hyperbolic shape, and the tower's visual impact is related to its size rather than its envelope. Architectural treatment cannot be applied to affect the inherent geometry of the hyperbolic tower structure in order to make it less visible. Such treatment can only be considered to include the limited possibilities of color and texture.

Addition of a natural draft wet cooling tower will render ineffective prior Indian Point planning efforts that have resulted in maintaining a low physical profile for the generating station installation vis-a-vis the Hudson River Valley. Visual containment of station structures within the confines of surrounding forest-covered high ground would be compromised.

Major impacts on the terrain in the area of the tower will occur. At least 22 acres of forest, containing important stands of large Hemlocks, will be eliminated to provide space for a natural draft or mechanical draft cooling tower system, and about 1,000 feet of vegetation along the natural shoreline will be modified during construction. An estimated 6 acres of denuded forest land can eventually be restored by post-construction reforestation. However, excavation for the tower (as shown in Figure 3-11 for natural draft cooling tower) will permanently alter the natural topography

from the river edge to beyond the rear of the tower (approximately 700 feet). In general, terrain modifications along and above the shore will be permanent, beyond the anticipated useful life span of the tower. However, construction and post-construction plans will include measures to minimize the environmental disruption -- including erosion and sedimentation control, and reforestation of areas denuded for construction access and material storage.

There is a dramatic difference in size between a natural draft and a mechanical draft cooling tower at Indian Point. Specifically, the natural draft tower structure has 15 to 20 times the volume of a mechanical draft tower and is over 7 times as high (a 6-story building compared to a 40-story building). Relative geometries of the two types of towers are significant too; the natural draft tower structure being about as high as the mechanical draft tower is long. These relative differences in tower geometry are visually significant because means are available to make the long but relatively low mechanical draft towers harmonize with the surrounding natural environment, while such means are not available for a natural draft tower. The visible plume for both natural draft and mechanical draft towers will also cause an adverse aesthetic impact. The visual impacts of mechanical draft towers are, however, considered less significant and, therefore, the following sections on the subject relate primarily to a natural draft wet cooling tower.

6.5.4 Visual Impacts of the Cooling Tower Structure on the Surrounding Region

The major visual impact of the natural draft cooling tower is its size, which is greater than that of any other structure in the Hudson Valley Region surrounding Indian Point. Indeed, it would be the highest structure along the Hudson River, from New York City north, almost to the Albany Mall. Visual indicators of its size are that it will rise about 200 feet higher than the existing Indian Point Unit No. 1 stack, and that the playing area of a football field could be placed on top of the cooling tower.

Con Edison has made a photographic study of how natural draft cooling towers would appear from nearby areas. A series of photographs were taken from different vantage points, and towers then simulated on them. The tower structures used in this photographic study were somewhat different from the designs presently under consideration. However, the results of this study remain valid, and are summarized in Table 6-10. They illustrate the many visual variables affecting how a natural draft cooling tower structure would be perceived in the surrounding region.

Perception of the tower is based on an imaginary cone of vision radiating from the viewer's eyes. This varies with the individual's station point, and to the extent the cone of vision is interrupted (by land forms, foliage or structures), perception of the tower structure is affected. Thus, the tower may be located only 1,000 yards away and be completely shielded from view. On the other

**Advisory Council
On Historic Preservation**

1522 K Street N.W. Suite 430
Washington D.C. 20005

May 6, 1975

Mr. Carl L. Newman
Vice President
Consolidated Edison Company of
New York, Inc.
4 Irving Place
New York, N.Y. 10003

Dear Mr. Newman:

This responds to your letter of December 1, 1974, requesting the comments of the Advisory Council on Con Edison's report entitled "Economic and Environmental Impacts of Alternative Closed-Cycle Cooling Systems for Indian Point Unit No. 2," submitted to the Atomic Energy Commission in accordance with paragraph 2.E(2) of Facility Operating License DPR-26. We apologize for the delay in our response.

As you may know, the Advisory Council is an independent agency of the Executive Branch with the responsibility for commenting to Federal agencies on their projects that affect properties included in or eligible for inclusion in the National Register of Historic Places. Therefore, we have addressed our comments on your report directly to the responsible Federal agency, the Nuclear Regulatory Commission (NRC). A copy of our letter to Mr. Daniel R. Muller, Acting Director for Environmental Projects, Division of Reactor Licensing at the NRC is enclosed, along with a copy of the Council's "Procedures for the Protection of Historic and Cultural Properties" (36 C.F.R. Part 800).

If you have any questions on this matter, please contact Myra Harrison of the Council staff at 202-254-3380.

Sincerely yours,


John D. McDermott
Director, Office of Review and
Compliance

federal register

FRIDAY, JANUARY 25, 1974
WASHINGTON, D.C.

Volume 39 ■ Number 18

PART II



ADVISORY COUNCIL ON HISTORIC PRESERVATION

PROCEDURES FOR THE PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

Establishment of New Chapter and Part

Title 36—Parks, Forests, and Public Property

CHAPTER VIII—ADVISORY COUNCIL ON HISTORIC PRESERVATION

PART 800—PROCEDURES FOR THE PROTECTION OF HISTORIC AND CULTURAL PROPERTIES

Pursuant to the National Historic Preservation Act of 1966 (80 Stat. 915, 16 U.S.C. 470) and Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment" (36 FR 8921, 16 U.S.C. 470); the Advisory Council on Historic Preservation has established Procedures for Compliance, set forth in the FEDERAL REGISTER of February 28, 1973 (38 FR 5388), to implement the purposes of those authorities. Proposed revisions to those procedures were published in the FEDERAL REGISTER of November 5, 1973 (38 FR 30464) and 30 days were allowed for public comment. Federal agencies were also solicited to consult with the Advisory Council with regard to the development of procedures for the protection of non-federally owned historic and cultural properties as required by section 1(3) of Executive Order 11593.

In response to comments received by the Advisory Council and in consultation with Federal agencies, the proposed procedures have been revised to incorporate suggestions from Federal and State agencies and private citizens. It is the purpose of this notice, through publication of revised "Procedures for the Protection of Historic and Cultural Properties," to apprise the public as well as government agencies, associations, and all other organizations and individuals interested in historic preservation, that the following procedures are hereby adopted as set forth below. The procedures will appear in the Code of Federal Regulations in Title 36, Chapter 8 at Part 800. The procedures are being codified because they affect State and local governmental agencies, private organizations, and individuals, in addition to Federal agencies, to which they are specifically directed, and because of the resultant need to make them widely and readily available.

Federal agencies are advised that the procedures set forth certain steps for agencies to follow to fulfill their obligations pursuant to section 1(3) of Executive Order 11593 and to use as a guide in the development of their required internal procedures in consultation with the Council. The Advisory Council reiterates its solicitation of Federal agencies to consult with the Council on the development of those procedures. Inquiries regarding such consultation, as well as inquiries regarding the substance of and compliance with the procedures in general, should be directed to the Executive Secretary, Advisory Council on Historic Preservation, Suite 430, 1522 K Street NW., Washington, D.C. 20005.

Effective date: January 25, 1974.

ROBERT R. GARVEY, Jr.,
Executive Director, Advisory
Council on Historic Preservation.

A new Chapter VIII, Advisory Council on Historic Preservation, containing Part 800, Procedures for the Protection of Historic and Cultural Properties, is added to title 36, CFR, reading as set forth below.

Sec.	
800.1	Purpose and authorities.
800.2	Coordination with agency requirements under the National Environmental Policy Act.
800.3	Definitions.
800.4	Agency procedures.
800.5	Consultation process.
800.6	Council procedures.
800.7	Other powers of the Council.
800.8	Criteria of effect.
800.9	Criteria of adverse effect.
800.10	National Register criteria.

AUTHORITY: Pub. L. 89-665, 80 Stat. 915, (16 U.S.C. 470); E.O. 11593, 3 CFR 1971 Comp., p. 154.

§ 800.1 Purpose and authorities.

(a) The National Historic Preservation Act of 1966 created the Advisory Council on Historic Preservation, an independent agency of the Executive branch of the Federal Government, to advise the President and Congress on matters involving historic preservation. Its members are the Secretary of the Interior, the Secretary of Housing and Urban Development, the Secretary of the Treasury, the Secretary of Commerce, the Attorney General, the Secretary of Transportation, the Secretary of Agriculture, the Administrator of the General Services Administration, the Secretary of the Smithsonian Institution, the Chairman of the National Trust for Historic Preservation, and 10 citizen members appointed by the President on the basis of their outstanding service in the field of historic preservation.

(b) The Council reviews Federal, federally assisted, and federally licensed undertakings affecting cultural properties as defined herein in accordance with the following authorities:

(1) *Section 106 of the National Historic Preservation Act.* Section 106 requires that Federal, federally assisted, and federally licensed undertakings affecting properties included in the National Register of Historic Places be submitted to the Council for review and comment prior to the approval of any such undertaking by the Federal agency.

(2) *Section 1(3) of Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment."* Section 1(3) requires that Federal agencies, in consultation with the Council, establish procedures regarding the preservation and enhancement of non-federally owned historic and cultural properties in the execution of their plans and programs. After soliciting consultation with the Federal agencies, the Advisory Council has adopted procedures, set forth in §§ 800.3 through 800.10, to achieve this objective and Federal agencies should fulfill their responsibilities under section 1(3) by following these procedures. The Council further recommends that Federal agencies use these procedures as a guide in the development, in consultation with the Council, of their required internal procedures.

(3) *Section 2(b) of Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment."* Federal agencies are required, by section 2(a) of the Executive Order, to locate, inventory, and nominate properties under their jurisdiction or control to the National Register. Until such processes are complete, Federal agencies must submit proposals for the transfer, sale, demolition, or substantial alteration of federally owned properties eligible for inclusion in the National Register to the Council for review and comment. Federal agencies must continue to comply with section 2(b) review requirements, even after the initial inventory is complete, when they obtain jurisdiction or control over additional properties that are eligible for inclusion in the National Register or when properties under their jurisdiction or control are found to be eligible for inclusion in the National Register subsequent to the initial inventory.

§ 800.2 Coordination with agency requirements under the National Environmental Policy Act.

Section 101(b) (4) of the National Environmental Policy Act (NEPA) declares that one objective of the national environmental policy is to "preserve important historic, cultural, and natural aspects of our national heritage and maintain, wherever possible, an environment which supports diversity and variety of individual choice." In order to meet this objective, the Advisory Council instructs Federal agencies to coordinate NEPA compliance with the separate responsibilities of the National Historic Preservation Act and Executive Order 11593 to ensure that historic and cultural resources are given proper consideration in the preparation of environmental impact statements. Agency obligations pursuant to the National Historic Preservation Act and Executive Order 11593 are independent from NEPA and must be complied with even when an environmental impact statement is not required. However, where both NEPA and the National Historic Preservation Act or Executive Order 11593 are applicable, the Council on Environmental Quality, in its *Guidelines for the Preparation of Environmental Impact Statements* (40 CFR Part 1500), directs that compliance with section 102(2)(C) of NEPA should, to the extent possible, be combined with other statutory obligations—such as the National Historic Preservation Act and Executive Order 11593—to yield a single document which meets all applicable requirements. To achieve this objective, Federal agencies should undertake, to the fullest extent possible, compliance with the procedures set forth below whenever properties included in or eligible for inclusion in the National Register are involved in a project to ensure that obligations under the National Historic Preservation Act and Executive Order 11593 are fulfilled during the preparation of a draft environmental impact statement required under section 102(2)(C) of NEPA. The Advisory Council recommends that compliance with these procedures be undertaken at the earliest

stages of the environmental impact statement process to expedite review of the statement. Statements on projects affecting properties included in or eligible for inclusion in the National Register should be sent directly to the Advisory Council for review. All statements involving historic, architectural, archeological, or cultural resources, whether or not included in or eligible for inclusion in the National Register, should be submitted to the Department of Interior for review.

§ 800.3 Definitions.

As used in these procedures:

(a) "National Historic Preservation Act" means Public Law 89-665, approved October 15, 1966, an "Act to establish a program for the preservation of additional historic properties throughout the Nation and for other purposes," 80 Stat. 915, 16 U.S.C. 470, as amended, 84 Stat. 204 (1970) and 87 Stat. 139 (1973) hereinafter referred to as "the Act."

(b) "Executive Order" means Executive Order 11593, May 13, 1971, "Protection and Enhancement of the Cultural Environment," 36 FR 8921, 16 U.S.C. 470.

(c) "Undertaking" means any Federal action, activity, or program, or the approval, sanction, assistance, or support of any other action, activity or program, including but not limited to:

(1) Recommendations or favorable reports relating to legislation, including requests for appropriations. The requirement for following these procedures applies to both: Agency recommendations on their own proposals for legislation and agency reports on legislation initiated elsewhere. In the latter case only the agency which has primary responsibility for the subject matter involved will comply with these procedures.

(2) New and continuing projects and program activities: directly undertaken by Federal agencies; or supported in whole or in part through Federal contracts, grants, subsidies, loans, or other forms of funding assistance; or involving a Federal lease, permit, license, certificate, or other entitlement for use.

(3) The making, modification, or establishment of regulations, rules, procedures, and policy.

(d) "National Register" means the National Register of Historic Places, which is a register of districts, sites, buildings, structures, and objects, significant in American history, architecture, archeology, and culture, maintained by the Secretary of the Interior under authority of section 2(b) of the Historic Sites Act of 1935 (49 Stat. 666, 16 U.S.C. 461) and section 101(a)(1) of the National Historic Preservation Act. The National Register is published in its entirety in the FEDERAL REGISTER each year in February. Addenda are published on the first Tuesday of each month.

(e) "National Register property" means a district, site building, structure, or object included in the National Register.

(f) "Property eligible for inclusion in the National Register" means any dis-

trict, site, building, structure, or object which the Secretary of the Interior determines is likely to meet the National Register Criteria. As these determinations are made, a listing is published in the FEDERAL REGISTER on the first Tuesday of each month, as a supplement to the National Register.

(g) "Decision" means the exercise of agency authority at any stage of an undertaking where alterations might be made in the undertaking to modify its impact upon historic and cultural properties.

(h) "Agency Official" means the head of the Federal agency having responsibility for the undertaking or a subordinate employee of the Federal agency to whom such authority has been delegated.

(i) "Chairman" means the Chairman of the Advisory Council on Historic Preservation, or such member designated to act in his stead.

(j) "Executive Director" means the Executive Director of the Advisory Council on Historic Preservation established by Section 205 of the Act, or his designated representative.

(k) "State Historic Preservation Officer" means the official within each State, authorized by the State at the request of the Secretary of the Interior, to act as liaison for purposes of implementing the Act, or his designated representative.

(l) "Secretary" means the Secretary of the Interior, or his designee authorized to carry out the responsibilities of the Secretary of the Interior under Executive Order 11593.

§ 800.4 Agency procedures.

At the earliest stage of planning or consideration of a proposed undertaking, including comprehensive or area-wide planning in which provision may be made for an undertaking or an undertaking may be proposed, the Agency Official shall take the following steps to comply with the requirements of section 106 of the National Historic Preservation Act and sections 1(3) and 2(b) of Executive Order 11593.

(a) *Identification of resources.* As early as possible and in all cases prior to agency decision concerning an undertaking, the Agency Official shall identify properties located within the area of the undertaking's potential environmental impact that are included in or eligible for inclusion in the National Register.

(1) To identify properties included in the National Register, the Agency Official shall consult the National Register, including monthly supplements.

(2) To identify properties eligible for inclusion in the National Register, the Agency Official shall, in consultation with the appropriate State Historic Preservation Officer, apply the National Register Criteria, set forth in Section 800.10, to all properties possessing historical, architectural, archeological, or cultural value located within the area of the undertaking's potential environmental impact. If the Agency Official determines that a property appears to meet the Criteria, or if it is questionable

whether the Criteria are met, the Agency Official shall request, in writing, an opinion from the Secretary of the Interior respecting the property's eligibility for inclusion in the National Register. The Secretary of the Interior's opinion respecting the eligibility of a property for inclusion in the National Register shall be conclusive for the purposes of these procedures.

(b) *Determination of effect.* For each property included in or eligible for inclusion in the National Register that is located within the area of the undertaking's potential environmental impact, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Effect, set forth in Section 800.8, to determine whether the undertaking has an effect upon the property. Upon applying the Criteria and finding no effect, the undertaking may proceed. The Agency Official shall keep adequate documentation of a determination of no effect.

(c) *Effect established.* Upon finding that the undertaking will have any effect upon a property included in or eligible for inclusion in the National Register, the Agency Official, in consultation with the State Historic Preservation Officer, shall apply the Criteria of Adverse Effect, set forth in §800.9, to determine whether the effect of the undertaking is adverse.

(d) *Finding of no adverse effect.* Upon finding the effect not to be adverse, the Agency Official shall forward adequate documentation of the determination, including evidence of the views of the State Historic Preservation Officer, to the Executive Director for review. Unless the Executive Director notes an objection to the determination within 45 days after receipt of adequate documentation, the Agency Official may proceed with the undertaking.

(e) *Finding of adverse effect.* Upon finding the effect to be adverse or upon notification that the Executive Director does not accept a determination of no adverse effect, the Agency Official shall: (1) Request, in writing, the comments of the Advisory Council; (2) notify the State Historic Preservation Officer of this request; (3) prepare a preliminary case report; and (4) proceed with the consultation process set forth in Section 800.5.

(f) *Preliminary case report.* Upon requesting the comments of the Advisory Council, the Agency Official shall provide the Executive Director and the State Historic Preservation Officer with a preliminary case report, containing all relevant information concerning the undertaking. The Agency Official shall obtain such information and material from any applicant, grantee, or other beneficiary involved in the undertaking as may be required for the proper evaluation of the undertaking, its effects, and alternate courses of action.

§ 800.5 Consultation process.

(a) *Response to request for comments.* Upon receipt of a request for Advisory Council comments pursuant to Section 800.4(e), the Executive Director shall ac-

RULES AND REGULATIONS

knowledge the request and shall initiate the consultation process.

(b) *On-site inspection.* At the request of the Agency Official, the State Historic Preservation Officer, or the Executive Director, the Agency Official shall conduct an on-site inspection with the Executive Director, the State Historic Preservation Officer and such other representatives of national, State, or local units of government and public and private organizations that the consulting parties deem appropriate.

(c) *Public information meeting.* At the request of the Agency Official, the State Historic Preservation Officer, or the Executive Director, the Executive Director shall conduct a meeting open to the public, where representatives of national, State, or local units of government, representatives of public or private organizations, and interested citizens can receive information and express their views on the undertaking, its effects on historic and cultural properties, and alternate courses of action. The Agency Official shall provide adequate facilities for the meeting and shall afford appropriate notice to the public in advance of the meeting.

(d) *Consideration of alternatives.* Upon review of the pending case and subsequent to any on-site inspection and any public information meeting, the Executive Director shall consult with the Agency Official and State Historic Preservation Officer to determine whether there is a feasible and prudent alternative to avoid or satisfactorily mitigate any adverse effect.

(e) *Avoidance of adverse effect.* If the Agency Official, the State Historic Preservation Officer, and the Executive Director select and unanimously agree upon a feasible and prudent alternative to avoid the adverse effect of the undertaking, they shall execute a Memorandum of Agreement acknowledging avoidance of adverse effect. This document shall be forwarded to the Chairman for review pursuant to Section 800.6(a).

(f) *Mitigation of adverse effect.* If the consulting parties are unable to unanimously agree upon a feasible and prudent alternative to avoid any adverse effect, the Executive Director shall consult with the Agency Official and the State Historic Preservation Officer to determine whether there is a feasible and prudent alternative to satisfactorily mitigate the adverse effect of the undertaking. Upon finding and unanimously agreeing to such an alternative, they shall execute a Memorandum of Agreement acknowledging satisfactory mitigation of adverse effect. This document shall be forwarded to the Chairman for review pursuant to Section 800.6(a).

(g) *Memorandum of Agreement.* It shall be the responsibility of the Executive Director to prepare each Memorandum of Agreement required under these procedures. In preparation of such a document the Executive Director may request the Agency Official to prepare a proposal for inclusion in the Memorandum, detailing actions to be taken to avoid or mitigate the adverse effect.

(h) *Failure to avoid or mitigate adverse effect.* Upon the failure of consulting parties to find and unanimously agree upon a feasible and prudent alternative to avoid or satisfactorily mitigate the adverse effect, the Executive Director shall request the Chairman to schedule the undertaking for consideration at the next Council meeting and notify the Agency Official of the request. Upon notification of the request, the Agency Official shall delay further processing of the undertaking until the Council has transmitted its comments or the Chairman has given notice that the undertaking will not be considered at a Council meeting.

§ 800.6 Council procedures.

(a) *Review of Memorandum of Agreement.* Upon receipt of a Memorandum of Agreement acknowledging avoidance of adverse effect or satisfactory mitigation of adverse effect, the Chairman shall institute a 30-day review period. Unless the Chairman shall notify the Agency Official that the matter has been placed on the agenda for consideration at a Council meeting, the memorandum shall become final: (1) Upon the expiration of the 30-day review period with no action taken; or (2) when signed by the Chairman. Memoranda duly executed in accordance with these procedures shall constitute the comments of the Advisory Council. Notice of executed Memoranda of Agreement shall be published in the FEDERAL REGISTER monthly.

(b) *Response to request for consideration at Council meeting.* Upon receipt of a request from the Executive Director for consideration of the proposed undertaking at a Council meeting, the Chairman shall determine whether or not the undertaking will be considered and notify the Agency Official of his decision. To assist the Chairman in this determination, the Agency Official and the State Historic Preservation Officer shall provide such reports and information as may be required. If the Chairman decides against consideration at a Council meeting, he will submit a written summary of the undertaking and his decision to each member of the Council. If any member of the Council notes an objection to the decision within 15 days of the Chairman's decision, the undertaking will be scheduled for consideration at a Council meeting. If the Council members have no objection, the Chairman shall notify the Agency Official at the end of the 15-day period that the undertaking may proceed.

(c) *Decision to consider the undertaking.* Upon determination that the Council will consider an undertaking, the Chairman shall: (1) Schedule the matter for consideration at a regular meeting no less than 60 days from the date the request was received, or in exceptional cases, schedule the matter for consideration in an unassembled or special meeting; (2) notify the Agency Official and the State Historic Preservation Officer of the date on which comments will be considered; and (3) authorize the Executive Director to prepare a case report.

(d) *Content of the case report.* For

purposes of arriving at comments, the Advisory Council prescribes that certain reports be made available to it and accepts reports and statements from other interested parties. Specific informational requirements are enumerated below. Generally, the requirements represent an explication of elaboration of principles contained in the Criteria of Effect and in the Criteria of Adverse Effect. The Council notes, however, that the Act recognizes historical and cultural resources should be preserved "as a living part of our community life and development." Consequently, in arriving at final comments, the Council considers those elements in an undertaking that have relevance beyond historical and cultural concerns. To assist it in weighing the public interest, the Council welcomes information not only bearing upon physical, sensory, or esthetic effects but also information concerning economic, social, and other benefits or detriments that will result from the undertaking.

(e) *Elements of the case report.* The report on which the Council relies for comment shall consist of:

(1) A report from the Executive Director to include a verification of the legal and historical status of the property; an assessment of the historical, architectural, archeological, or cultural significance of the property; a statement indicating the special value of features to be most affected by the undertaking; an evaluation of the total effect of the undertaking upon the property; a critical review of any known feasible and prudent alternatives and recommendations to remove or mitigate the adverse effect;

(2) A report from the Agency Official requesting comment to include a general discussion and chronology of the proposed undertaking; when appropriate, an account of the steps taken to comply with section 102(2)(A) of the National Environmental Policy Act of 1969 (83 Stat. 852, 42 U.S.C. 4321): an evaluation of the effect of the undertaking upon the property, with particular reference to the impact on the historic, architectural, archeological and cultural values; steps taken or proposed by the agency to take into account, avoid, or mitigate adverse effects of the undertaking; a thorough discussion of alternate courses of action; and, if applicable and available, a copy of the draft environmental statement prepared in compliance with section 102(2)(C) of the National Environmental Policy Act of 1969;

(3) A report from any other Federal agency having under consideration an undertaking that will concurrently or ultimately affect the property, including a general description and chronology of that undertaking and discussion of the relation between that undertaking and the undertaking being considered by the Council;

(4) A report from the State Historic Preservation Officer to include an assessment of the significance of the property; an identification of features of special value; an evaluation of the effect of the undertaking upon the property and its specific components; an evaluation of

known alternate courses of action; a discussion of present or proposed participation of State and local agencies or organizations in preserving or assisting in preserving the property; an indication of the support or opposition of units of government and public and private agencies and organizations within the State; and the recommendations of his office;

(5) A report by any applicant or potential recipient when the Council considers comments upon an application for a contract, grant, subsidy, loan, or other form of funding assistance, or an application for a Federal lease, permit, license, certificate, or other entitlement for use. Arrangements for the submission and presentation of reports by applicants or potential recipients shall be made through the Agency Official having jurisdiction in the matter; and

(6) Other pertinent reports, statements, correspondence, transcripts, minutes, and documents received by the Council from any and all parties, public or private. Reports submitted pursuant to this section should be received by the Council at least two weeks prior to a Council meeting.

(f) *Coordination of case reports and statements.* In considerations involving more than one Federal department, either directly or indirectly, the Agency Official requesting comment shall act as a coordinator in arranging for a full assessment and discussion of all interdepartmental facets of the problem and prepare a record of such coordination to be made available to the Council. At the request of the Council, the State Historic Preservation Officer shall notify appropriate governmental units and public and private organizations within the State of the pending consideration of the undertaking by the Council, and coordinate the presentation of written statements to the Council.

(g) *Council meetings.* The Council does not hold formal hearings to consider comments under these procedures. Two weeks notice shall be given, by publication in the FEDERAL REGISTER, of all meetings involving Council review of Federal undertakings in accordance with these procedures. Reports and statements will be presented to the Council in open session in accordance with a prearranged agenda. Regular meetings of the Council generally occur on the first Wednesday and Thursday of February, May, August and November.

(h) *Oral statements to the Council.* A schedule shall provide for oral statements from the Executive Director; the referring Agency Official presently or potentially involved; the applicant or potential recipient, when appropriate; the State Historic Preservation Officer; and representatives of national, State, or local units of government and public and private organizations. Parties wishing to make oral remarks shall submit written statements of position in advance to the Executive Director.

(i) *Comments by the Council.* The comments of the Council, issued after consideration of an undertaking at a

Council meeting, shall take the form of a three-part statement, including an introduction, findings, and a conclusion. The statement shall include notice to the Agency Official of the report required under section 800.6(j) of these procedures. Comments shall be made to the head of the Federal Agency requesting comment or having responsibility for the undertaking. Immediately thereafter, the comments of the Council will be forwarded to the President and the Congress as a special report under authority of section 202(b) of the Act and published as soon as possible in the FEDERAL REGISTER. Comment shall be available to the public upon receipt of the comments by the head of the Federal agency.

(j) *Report of agency action in response to Council comments.* When a final decision on the undertaking is reached by the Federal Agency, the Agency Official shall submit a written report to the Council containing a description of actions taken by the Federal Agency subsequent to the Council's comments; a description of actions taken by other parties pursuant to the actions of the Federal Agency; and the ultimate effect of such actions on the property involved. The Council may request supplementary reports if the nature of the undertaking requires them.

(k) *Records of the Council.* The records of the Council shall consist of a record of the proceedings at each meeting, the case report prepared by the Executive Director, and all other reports, statements, transcripts, correspondence, and documents received.

(l) *Continuing review jurisdiction.* When the Council has commented upon an undertaking pursuant to Section 800.6 such as a comprehensive or area-wide plan that by its nature requires subsequent action by the Federal Agency, the Council will consider its comments or approval to extend only to the undertaking as reviewed. The Agency Official shall ensure that subsequent action related to the undertaking is submitted to the Council for review in accordance with § 800.4(e) of these procedures when that action is found to have an adverse effect on a property included in or eligible for inclusion in the National Register.

§ 800.7 Other powers of the Council.

(a) *Comment or report upon non-Federal undertaking.* The Council will exercise the broader advisory powers, vested by section 202(a) (1) of the Act, to recommend measures concerning a non-Federal undertaking that will adversely affect a property included in or eligible for inclusion in the National Register: (1) upon request from the President of the United States, the President of the U.S. Senate, or the Speaker of the House of Representatives, or (2) when agreed upon by a majority vote of the members of the Council.

(b) *Comment or report upon Federal undertaking in special circumstances.* The Council will exercise its authority to comment to Federal agencies in certain special situations even though written notice that an undertaking will have an

effect has not been received. For example, the Council may choose to comment in situations where an objection is made to a Federal agency finding of "no effect."

§ 800.8 Criteria of effect.

A Federal, federally assisted, or federally licensed undertaking shall be considered to have an effect on a National Register property or property eligible for inclusion in the National Register (districts, sites, buildings, structures, and objects, including their settings) when any condition of the undertaking causes or may cause any change, beneficial or adverse, in the quality of the historical, architectural, archeological, or cultural character that qualifies the property under the National Register Criteria.

§ 800.9 Criteria of adverse effect.

Generally, adverse effects occur under conditions which include but are not limited to:

- (a) Destruction or alteration of all or part of a property;
- (b) Isolation from or alteration of its surrounding environment;
- (c) Introduction of visual, audible, or atmospheric elements that are out of character with the property or alter its setting;
- (d) Transfer or sale of a federally owned property without adequate conditions or restrictions regarding preservation, maintenance, or use; and
- (e) Neglect of a property resulting in its deterioration or destruction.

§ 800.10 National Register criteria.

(a) "National Register Criteria" means the following criteria established by the Secretary of the Interior for use in evaluating and determining the eligibility of properties for listing in the National Register: The quality of significance in American history, architecture, archeology, and culture is present in districts, sites, buildings, structures, and objects of State and local importance that possess integrity of location, design, setting, materials, workmanship, feeling and association and:

- (1) That are associated with events that have made a significant contribution to the broad patterns of our history; or
- (2) That are associated with the lives of persons significant in our past; or
- (3) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (4) That have yielded, or may be likely to yield, information important in prehistory or history.

(b) *Criteria considerations.* Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in na-

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ture, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

(1) A religious property deriving primary significance from architectural or artistic distinction or historical importance;

(2) A building or structure removed from its original location but which is

the surviving structure most importantly associated with a historic person or event;

(3) A birthplace or grave of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life;

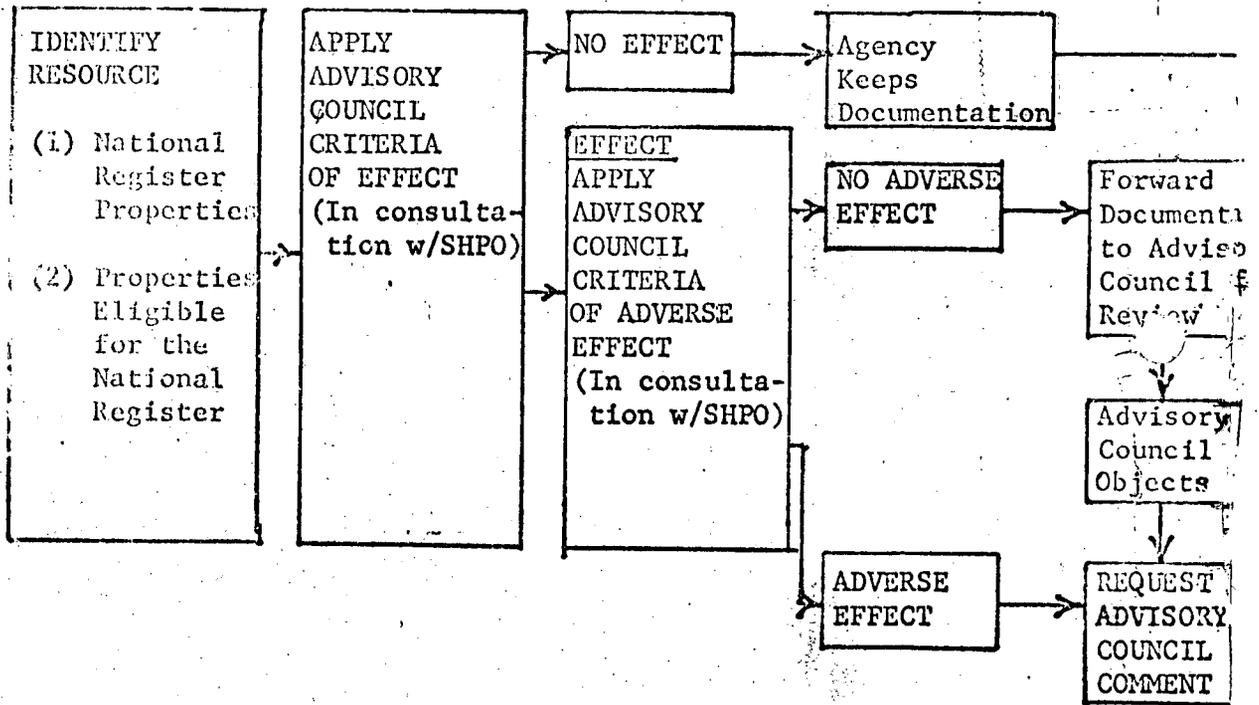
(4) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events;

(5) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived;

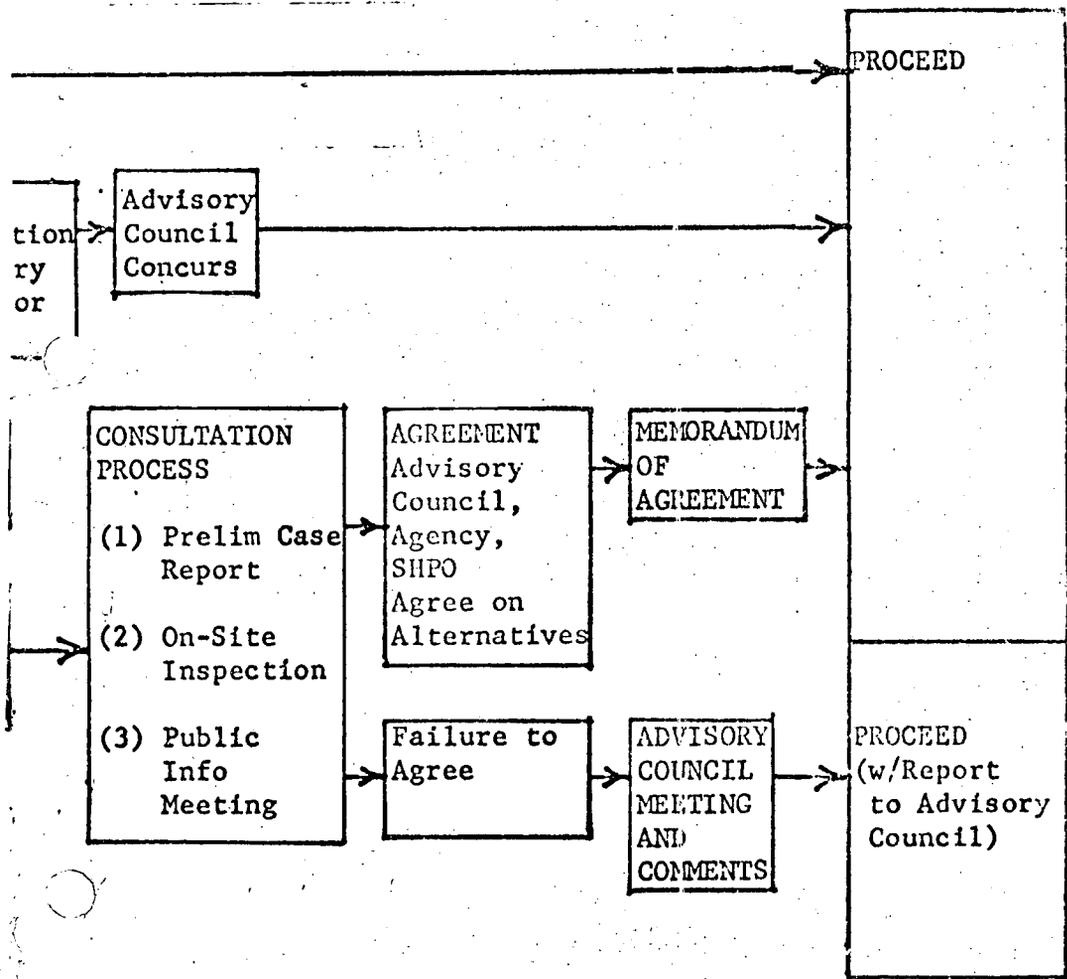
(6) A property primarily commemorative in intent if design, age tradition, or symbolic value has invested it with its own historical significance; or

(7) A property achieving significance within the past 50 years if it is of exceptional importance.

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