Register or which may meet the Criteria in the area of the project’s potential environmental impact. The determination of the Secretary of the Interior shall be final with respect to properties which are eligible for listing in the National Register. The Council will not comment on affected properties which are not either listed in or eligible for listing in the National Register. In order to facilitate the process, information to be requested from the State Historic Preservation Officer under §801.3(b)(2) should include advice on applying the Criteria of Effect and Adverse Effect provided that this period shall not be included in the 45 day State Historic Preservation Officer Review Period. Special attention should be paid to indirect effects, such as changes in land use, traffic patterns, street activity, population density and growth rate. While some aspects of a project may have little potential to adversely affect the significant qualities of a historic property, other project components may meet the Criteria of Effect and Adverse Effect. If any aspect of the project results in an effect determination, further evaluation of the effect shall be undertaken in accordance with these regulations. The resulting determination regarding the effect shall be included in the application.

(i) No effect. If the applicant determines that the project will have no effect on any National Register property and/or property which meets the Criteria, the project requires no further review by the Council unless a timely objection is made by the Executive Director. An objection may be made by the Executive Director at any time during the UDAG application process prior to the expiration of the period for receiving objections to HUD’s release of funds as specified in 24 CFR 58.31. The manner in which the Executive Director shall make an objection is set forth in §801.4(a).

(ii) Determinations of no adverse effect. If the applicant finds there is an effect on the property but it is not adverse, the applicant after receiving the comments of the State Historic Preservation Officer during the State Historic Preservation Officer Review Period shall forward adequate documentation (see §801.7(a)) of the Determination, including the written comments of the State Historic Preservation Officer, if available, to the Executive Director for review in accordance with §801.4.

(iii) Adverse effect determination. If the applicant finds the effect to be adverse or if the Executive Director objects to an applicant’s no adverse effect determination pursuant to §801.4(a), the applicant shall proceed with the consultation process in accordance with §801.4(b).

§ 801.4 Council comments.

The following subsections specify how the Council will respond to an applicant’s request for the Council’s comments required to satisfy the applicant’s responsibilities under section 106 of the Act and section 110 of the HCDA of 1980. When appropriate, an applicant may waive the Council time periods specified in these regulations.

(a) Executive Director’s Objection to No Effect Determination. If the Executive Director has reason to question an applicant’s determination of no effect, he shall notify the applicant and HUD. If the Executive Director does not object within 15 days of such notification, the project may proceed. If the Executive Director objects, he shall specify whether or not the project will have an adverse effect on National Register property and/or property which meets the Criteria. Normally, the Executive Director will object to a determination of no effect when the record does not support the applicant’s determination (see §801.7(a)). The applicant must then comply with the provisions of subsection (b) if the Executive Director determines that the project will have no adverse effect or subsection (c) if the Executive Director has determined that the project will have an adverse effect.

(b) Response to Determinations of No Adverse Effect. (1) Upon receipt of a Determination of No Adverse Effect from an applicant, the Executive Director will review the Determination and supporting documentation required by §801.7(a). Failure to provide the required information at the time the applicant requests Council comments will delay the process. The Executive Director will respond to the applicant within 15 days after receipt of the information.
required in §801.7(a). Unless the Executive Director objects to the Determination within 15 days after receipt, the applicant will be considered to have satisfied its responsibilities under section 106 of the Act and these regulations and no further Council review is required.

(2) If the Executive Director objects to a Determination of No Adverse Effect, the consultation process pursuant to §801.4(c) shall be initiated.

(c) Consultation process. If any aspect of the project is found to have adverse effects on National Register property or property which has been determined by the applicant or the Secretary of the Interior to meet the Criteria, the Executive Director shall consult to consider feasible and prudent alternatives to the project that could avoid, mitigate, or minimize the adverse effect on the affected property.

(1) Parties. The applicant, the State Historic Preservation Officer and the Executive Director shall be the consulting parties. The Department of HUD, other representatives of national, State, or local units of government, other parties in interest, and public and private organizations, may be invited by the consulting parties to participate in the consultation process.

(2) Timing. The consulting parties shall have a total of 45 days from the receipt by the Executive Director of the information required in §801.7(a) to agree upon feasible and prudent alternatives to avoid, mitigate, or minimize any adverse effects of the project. Failure of an applicant to provide the information required in §801.7(b) will delay the beginning of the time period specified above.

(3) Information requirements. The applicant shall provide copies of the information required in §801.7(b) to the consulting parties at the initiation of the consultation process and make it readily available for public inspection.

(4) Public meeting. An onsite Inspection and a Public Information Meeting may be held in accordance with the provisions of 36 CFR 800.6(b). Public hearings or meetings conducted by the applicant in the preparation of the application may, as specified below, substitute for such Public Information Meetings. Upon request of the applicant, the Executive Director may find that such public meetings have been adequate to consider the effect of the project on National Register properties or properties which meet the Criteria, and no further Public Information Meeting is required.

(5) Consideration of alternatives. During the consultation period, the consulting parties shall, in accordance with the policies set forth in 36 CFR 800.6(b) (4) and (5), review the proposed project to determine whether there are prudent and feasible alternatives to avoid or satisfactorily mitigate adverse effect. If they agree on such alternatives, they shall execute a Memorandum of Agreement in accordance with §801.4(c) specifying how the undertaking will proceed to avoid or mitigate the adverse effect.

(6) Acceptance of adverse effect. If the consulting parties determine that there are no feasible and prudent alternatives that could avoid or satisfactorily mitigate the adverse effects and agree that it is in the public interest to proceed with the proposed project they shall execute a Memorandum of Agreement in accordance with §801.4(c) acknowledging this determination and specifying any recording, salvage, or other measures associated with acceptance of the adverse effects that shall be taken before the project proceeds.

(7) Failure to agree. Upon the failure of the consulting parties to agree upon the terms for a Memorandum of Agreement within the specified time period, or upon notice of a failure to agree by any consulting party to the Executive Director, the Executive Director within 15 days shall recommend to the Chairman whether the matter should be scheduled for consideration at a Council meeting. If the Executive Director recommends that the Council not consider the matter, he shall simultaneously notify all Council members and provide them copies of the preliminary case report and the recommendation to the Chairman. The applicant and the State Historic Preservation Officer shall be notified in writing of the Executive Director's recommendation.
§ 801.4  36 CFR Ch. VIII (7–1–10 Edition)
(d) Memorandum of Agreement—
   (1) Preparation of Memorandum of Agreement. It shall be the responsibility of the
   Executive Director to prepare each Memorandum of Agreement required under this part. As appropriate, other
   parties may be invited by the consulting parties to be signatories to the
   Agreement or otherwise indicate their concurrence with the Agreement. In
   order to facilitate the process, the applicant may provide the Executive Di-
   rector a draft for a Memorandum of Agreement. At the applicant's option,
   such draft may be prepared at the time the applicant makes its determinations
   that properties listed in the National Register or which may meet the Cri-
   teria for listing in the National Reg-
   ister may be adversely affected. The
   applicant must provide the State His-
   toric Preservation Officer an oppor-
   tunity to concur in or comment on its
   draft Agreement.
   (2) Review of Memorandum of Agree-
   ment. Upon receipt of an executed
   Memorandum of Agreement, the Chair-
   man shall institute a 15 day review pe-
   riod. Unless the Chairman notifies the
   applicant that the matter has been
   placed on the agenda for consideration
   at a Council meeting, the Agreement
   shall become final when ratified by the
   Chairman or upon the expiration of the
   15 day review period with no action
   taken. Copies will be provided to sig-
   natories. A copy of the Memorandum of Agreement should be included in any
   Environmental Assessment or Environ-
   mental Impact Statement prepared
   pursuant to the National Environ-
   mental Policy Act.
   (3) Effect of Memorandum of Agree-
   ment. (i) Agreements duly executed in
   accordance with these regulations shall
   constitute the comments of the Coun-
   cil and shall evidence satisfaction of the
   applicant's responsibilities for the
   proposed project under section 106 of
   the Act and these regulations.
   (ii) If the Council has commented on
   an application that is not approved by
   HUD and a subsequent UDAG applica-
   tion is made for the same project, the
   project need not be referred to the
   Council again unless there is a signifi-
   cant amendment to the project which
   would alter the effect of the project on
   previously considered properties or re-
   sult in effects on additional National
   Register properties or properties which
   meet the Criteria.
   (iii) Failure to carry out the terms of a
   Memorandum of Agreement requires
   that the applicant again request the
   Council's comments in accordance with
   these regulations. In such instances,
   until the Council issues its comments
   under these regulations the applicant
   shall not take or sanction any action
   or make any irreversible or irretriev-
   able commitment that could result in
   an adverse effect with respect to Na-
   tional Register properties or properties
   which are eligible for inclusion in the
   National Register covered by the
   Agreement or that would foreclose the
   Council's consideration of modifications or alternatives to the proposed
   project that could avoid or mitigate
   the adverse effect.
   (4) Amendment of a Memorandum of
   Agreement. Amendments to the Agree-
   ment may be made as specified in 36
   CFR 800.6(c)(4).
   (5) Report on Memorandum of Agree-
   ment. Within 90 days after carrying out
   the terms of the Agreement, the appli-
   cant shall report to all signatories on
   the actions taken.
   (e) Council Meetings. Council meet-
   ings to consider a project will be con-
   ducted in accordance with the policies
   set forth in 36 CFR 800.6(d).
   (1) Response to recommendation con-
   cerning consideration at Council meeting.
   Upon receipt of a recommendation
   from the Executive Director con-
   cerning consideration of a proposed
   project at a Council meeting, the
   Chairman shall determine whether or
   not the project will be considered. The
   Chairman shall make a decision within
   15 days of receipt of the recommenda-
   tion of the Executive Director. In
   reaching a decision the Chairman shall
   consider any comments from Council
   members. If three members of the
   Council object within the 15 day period
   to the Executive Director's rec-
   ommendation, the project shall be
   scheduled for consideration at a Coun-
   cil or panel meeting. Unless the matter
   is scheduled for consideration by the
   Council the Chairman shall notify the
   applicant, the Department of HUD, the
   State Historic Preservation Officer and
   other parties known to be interested of
the decision not to consider the matter. Such notice shall be evidence of satisfaction of the applicant’s responsibilities for the proposed project under section 106 of the Act and these regulations.

(ii) Prior to any panel or full Council consideration of a matter, the Chairman will notify the applicant and the State Historic Preservation Officer and other interested parties of the date on which the project will be considered. The Executive Director, the applicant, the Department of HUD, and the State Historic Preservation Officer shall prepare reports in accordance with §801.7(b). Reports from the applicant and the State Historic Preservation Officer must be received by the Executive Director at least 7 days before any meeting.

(3) Notice of Council meetings. At least 7 days notice of all meetings held pursuant to this section shall be given by publication in the Federal Register. The Council shall provide a copy of the notice by mail to the applicant, the State Historic Preservation Officer, and the Department of Housing and Urban Development. The Council will inform the public of the meeting through appropriate local media.

(iii) Notice of meetings of the Council and the public shall be sent to the applicant and to the State Historic Preservation Officer. The notice shall be sent at least 7 days before the meeting, except as provided in §801.7(b). The notice shall state the time and place of the meeting and the purpose for which it is called.

(iii) Notice of meetings of the Council and the public shall be sent to the applicant and to the State Historic Preservation Officer. The notice shall be sent at least 7 days before the meeting, except as provided in §801.7(b). The notice shall state the time and place of the meeting and the purpose for which it is called.

(4) Statements to the Council. An agenda shall provide for oral statements from the Executive Director; the applicant; the Department of HUD; parties in interest; the Secretary of the Interior; the State Historic Preservation Officer; representatives of national, State, or local units of government; and interested public and private organizations and individuals. Parties wishing to make oral remarks should notify the Executive Director at least two days in advance of the meeting. Parties wishing to have their written statements distributed to Council members prior to the meeting should send copies of the statements to the Executive Director at least 5 days in advance.

(ii) Prior to any panel or full Council consideration of a matter, the Chairman will notify the applicant and the State Historic Preservation Officer and other interested parties of the date on which the project will be considered. The Executive Director, the applicant, the Department of HUD, and the State Historic Preservation Officer shall prepare reports in accordance with §801.7(b). Reports from the applicant and the State Historic Preservation Officer must be received by the Executive Director at least 7 days before any meeting.

(5) Comments of the Council. The written comments of the Council will be issued within 7 days after a meeting. Comments by a panel shall be considered the comments of the full Council. Comments shall be made to the applicant requesting comment and to the Department of HUD. Immediately after the comments are made to the applicant and the Department of HUD, 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 a notice of availability will be published in the Federal Register. The comments of the Council shall be made available to the State Historic Preservation Officer, other parties in interest, and the public upon receipt of the comments by the applicant. The applicant should include the comments of the Council in any final Environmental Impact Statement prepared pursuant to the National Environmental Policy Act.

(6) Action in response to Council comments. The comments of the Council shall be taken into account in reaching a final decision on the proposed project. When a final decision regarding the proposed project is reached by the applicant and the Department of HUD, they shall submit written reports to the Council describing the actions taken by them and other parties in response to the Council’s comments and the impact that such actions will have on the affected National Register properties or properties eligible for inclusion in the National Register. Receipt of this report by the Chairman shall be evidence that the applicant has satisfied its responsibilities for the proposed project under section 106 of the Act and these regulations. The Council may issue a final report to the President and the Congress under authority of section 202(b) of the Act describing the actions taken in response to the
§ 801.5  

Council's comments including recommendations for changes in Federal policy and programs, as appropriate.

(f) 

Suspense of Action. Until the Council issues its comments under these regulations and during the State Historic Preservation Officer Review Period and the determination period of the Secretary of the Interior, good faith consultation shall preclude the applicant from taking or sanctioning any action or making any irreversible or irretrievable commitment that could result in an adverse effect on a National Register property or property which may meet the Criteria or that would foreclose the consideration of modifications or alternatives to the proposed project that could avoid, mitigate, or minimize such adverse effects. In no case shall UDAG funds be used for physical activities on the project site until the Council comments have been completed. Normal planning and processing of applications short of actual commitment of funds to the project may proceed.

(g) 

Lead Agency. If the project proposed by the applicant involves one or more Federal agencies, they may agree on a single lead agency to meet the requirements of section 106 of the National Historic Preservation Act and section 110 of the Housing and Community Development Act of 1980 and notify the Executive Director. If the applicant is the designated lead agency, these regulations shall be followed. If a Federal agency is designated lead agency, the process in 36 CFR part 800 shall be used.

(h) 

Compliance by a Federal Agency. An applicant may make a finding that it proposes to accept a Federal agency's compliance with section 106 of the Act and 36 CFR part 800 and provide a copy of the Federal agency's document where the finding occurs. Unless the Executive Director objects within 10 days of receipt of such notice the Council need not be afforded further opportunity for comment. If the Executive Director objects to the finding of the applicant, the applicant shall comply with §801.4.

§ 801.5  State Historic Preservation Officer responsibilities.

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

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