

CHAPTER 6 PRESERVATION REVIEW OF DISTRICT OF COLUMBIA GOVERNMENT PROJECTS

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600 GENERAL PROVISIONS

- 600.1 This chapter establishes procedures to implement Sections 9a and 9b of the Historic Landmark and Historic District Protection Act of 1978, as amended (D.C. Official Code §§ 6-1108.01 and 6-1108.02). Section 9a governs the conceptual review of public safety facilities. Section 9b requires District agencies to take into account the effect of their undertakings on designated and eligible historic properties, and to consult with and afford the State Historic Preservation Officer (SHPO) a reasonable opportunity to comment.
- 600.2 The statutory requirement for a historic preservation review of District of Columbia undertakings is similar to Section 106 of the National Historic Preservation Act (NHPA), which mandates a historic preservation review of federal government undertakings. The procedures in this chapter are modeled on the federal regulations implementing Section 106 (36 CFR Part 800), with revisions appropriate for the local context.
- 600.3 The level of effort needed to achieve compliance with this chapter depends upon the nature and complexity of the proposed District undertaking, the magnitude of its potential effects on historic or eligible properties, and the degree of public interest in the project. This chapter guides District agencies on the appropriate level of review for various circumstances.
- 600.4 In order to accommodate provisions of other District and federal laws, District agencies may use one of several alternate approaches to achieve compliance

with the requirement for historic preservation review of District of Columbia undertakings. The nature of the District undertaking, the type of property affected and the advice of the SHPO will determine which method is appropriate to use in any given circumstance.

- 600.5 Public safety facilities are subject to both Sections 9a and 9b of the Act. The procedure for treatment of a public safety facility is substantially similar to that for any other District undertaking, except for the requirement to determine whether to list an eligible public safety property as a historic landmark (D.C. Official Code §§ 6-1108.01(d)(1)(B)), and the presumption of special merit for public safety facilities (D.C. Official Code §§ 6-1108.01(g)).
- 600.6 If a project constitutes a District undertaking, the entire scope of the project is subject to review by the SHPO. This is consistent with the Section 106 review procedures and helps to establish uniform standards of treatment for District government projects.
- 600.7 Terms specifically applicable to this chapter are defined in § 699. The following terms and others applicable throughout this subtitle are defined in Chapter 99:
- (a) eligible property;
 - (b) historic property;
 - (c) public safety facility; and
 - (d) Section 106.

601 DISTRICT GOVERNMENT STEWARDSHIP OF HISTORIC PROPERTY

- 601.1 The District of Columbia government assumes a leadership role in historic preservation through its ownership of and jurisdiction over several hundred designated and eligible historic properties, including buildings, structures, parks, and archaeological sites. The procedures in this chapter are intended to ensure that the District protects its designated and eligible historic properties in a manner that is consistent with the Historic Protection Act and responsible government stewardship of civic assets. These procedures are also designed to assist the District government in making fiscally responsible decisions regarding the historic properties under its jurisdiction.
- 601.2 District agencies with substantial responsibilities for historic property are encouraged to maintain a qualified historic preservation professional on staff in order to facilitate good stewardship and compliance with the preservation review process.

- 601.3 All District agencies, particularly those unable maintain in-house historic preservation staff, are encouraged to take advantage of the historic preservation expertise of the SHPO staff.
- 601.4 District agencies are encouraged to utilize private sector expertise in historic preservation. District agencies may allow qualified contract professionals, project architects, or other representatives of private sector lessees or developers to provide information to the SHPO and to represent the agency during consultation on an undertaking, provided that an authorized agency official takes responsibility for all significant decisions made on behalf of the agency during the review process.

602 DISTRICT AGENCY RESPONSIBILITIES

- 602.1 Each District agency, including each independent agency, is responsible for ensuring that it complies with the historic preservation review requirement of the Act.
- 602.2 Each District agency shall incorporate the historic preservation review process as an integral, coordinated, and routine part of its project planning.
- 602.3 Any District agency needing guidance or support in meeting the requirements of this chapter shall contact the SHPO for assistance.
- 602.4 The District agency responsible for an undertaking shall ensure that it initiates the preservation review process as early as possible when the widest range of project alternatives is open for consideration.
- 602.5 As required by Section 9b of the Act, the District agency responsible for an undertaking shall ensure that the preservation review process is completed before authorizing the expenditure of funds for design or construction, and before seeking the permit, license, or approval for the undertaking. However, if the District agency and SHPO agree that preparation of a design concept is necessary to determine the effect of the undertaking on historic and eligible properties, the agency may proceed to develop the necessary design concept in consultation with the SHPO as part of the preservation review process.

603 STATE HISTORIC PRESERVATION OFFICER RESPONSIBILITIES

- 603.1 The State Historic Preservation Officer is responsible for commenting on District undertakings and guiding District agencies to ensure compliance with the historic preservation review requirement of the Act and this chapter.
- 603.2 The SHPO shall serve as a District government resource for advice on historic preservation issues. The SHPO shall provide District agencies with guidance

and a reasonable level of technical assistance in meeting the requirements of this chapter.

603.3 The SHPO shall assist District agencies in determining the appropriate approach for compliance with this chapter. If a District undertaking is subject to a substantially equivalent historic preservation review under the Act or Section 106 of the NHPA, the SHPO may consult and provide its comments under one of those alternative provisions rather than by following the procedures in this chapter.

603.4 The SHPO shall provide a timely response to District agency requests for consultation.

- (a) Unless otherwise noted, the standard time frame for SHPO responses in the preservation review process is thirty (30) days from the date the SHPO receives an adequately documented request for review of a project, finding, or determination.
- (b) The SHPO may request additional information if it is needed, but shall not unreasonably delay the review process.
- (c) If the SHPO fails to respond within 30 days of receipt of a submission, the agency may proceed to the next step in the process.
- (d) Except as noted otherwise, the SHPO may respond by letter, email, telephone or any other method that expedites the review process.

603.5 The SHPO may allow a District agency to consolidate multiple steps in the preservation review process when it is possible and appropriate to do so.

603.6 The SHPO may consult with a District agency to develop a programmatic agreement establishing customized procedures to facilitate efficiency and compliance with this chapter.

603.7 The SHPO may elect to issue final comments at any time during the review process.

604 PUBLIC PARTICIPATION

604.1 The views of the public are an important component of the historic preservation review of District undertakings. District agencies shall seek and consider the views of the public as an integral part of the review process.

604.2 The responsibility for notifying the public of a District undertaking and facilitating an appropriate level of public involvement rests with the District agency rather than the SHPO. Each District agency should develop its own

policies for public notice of its undertakings, and should provide opportunities for public participation and comment.

- 604.3 The degree to which a District agency should provide opportunities for public participation depends upon the nature and complexity of the undertaking, its effects on historic properties, and public interest in relevant historic preservation concerns. District agencies may seek advice from the SHPO regarding the appropriate timing, level, and methods of public participation for their undertakings.
- 604.4 District agencies are encouraged to take maximum advantage of reviews by the Historic Preservation Review Board, Commission of Fine Arts, and National Capital Planning Commission. These reviews provide not only expert professional advice but also opportunities to receive public comment.
- 604.5 District agencies are strongly encouraged to seek and consider the comments of affected Advisory Neighborhood Commissions on any undertaking that may involve issues significant to neighborhood preservation, planning, or development. The District agency shall seek ANC and SHPO views in a coordinated manner so that it can consider community and historic preservation comments simultaneously as it develops project plans.
- 604.6 District agencies are encouraged to discuss projects that may have a significant effect on historic or eligible properties with interested historic preservation and community organizations, and to solicit their views directly.
- 604.7 When following the Section 106 review process as a means of compliance with this chapter, a District agency shall identify and involve public consulting parties as provided in Section 106 regulations (36 CFR Part 800). District agencies may identify and involve consulting parties in the same way when following the preservation review process described in this chapter.
- 604.8 The SHPO may solicit the views of the public on a District undertaking and may seek any public involvement that it deems appropriate.
- 604.9 The SHPO may notify the public of its review of a District undertaking by using the public mailing list described in § 3202. If the SHPO refers a District undertaking to the Historic Preservation Review Board for advice, it shall provide notice of this referral as provided in § 323.

605 MASTER PLANS AND OTHER PLANNING ACTIVITIES

- 605.1 District agencies are encouraged to consult with the SHPO on long-range planning for historic and eligible properties under their jurisdiction. Any District agency may request advice, technical assistance, or information from the SHPO for preservation planning purposes.

- 605.2 District agencies are encouraged to submit master plans, facilities plans, and requests for development proposals to the SHPO for review and comment before adoption or issuance. The purpose of this review is to ensure that the agency is aware of any historic or eligible properties that may be affected, and to identify and advise on any potential historic preservation issues at the earliest possible opportunity. SHPO review is also intended to help avoid any unexpected preservation conflicts as implementation of a master plan or a selected development proposal proceeds.
- 605.3 District agencies may develop master plans and undertake other planning activities without SHPO consultation, provided that these plans or activities do not foreclose consideration of reasonable alternatives on any future District undertaking. A District agency may also conduct reasonable, nondestructive planning to help evaluate and define the nature and scope of a specific project before initiating consultation with the SHPO, provided that the agency does not make a decision that would foreclose consideration of reasonable alternatives during consultation on the project.
- 605.4 District agencies are encouraged to involve the public in the development of master plans and similar plans for public facilities.
- 605.5 The SHPO may provide informal advice to any District agency and may conduct an internal review of a draft agency document if requested by the agency and appropriate to the circumstances.

606 FINANCIAL ASSISTANCE FOR SURVEY AND PLANNING PROJECTS

- 606.1 Any District agency may apply to the SHPO for financial assistance with survey, documentation, or preservation planning for historic properties under its jurisdiction. The agency shall apply for financial assistance in the same manner as any other eligible applicant, and any proposal shall meet all standards and requirements applicable to SHPO grant-funded activities.
- 606.2 The SHPO shall consider District agency proposals on a competitive basis along with any other applications submitted in accordance with its standard grant cycle. Any grant award shall be at the discretion of the SHPO and shall depend on the merit of the application and the availability of funds.

607 COORDINATION WITH OTHER REVIEW PROCEDURES

- 607.1 District agencies shall undertake the preservation review process simultaneously and in coordination with other required District and federal reviews.

- 607.2 The SHPO shall conduct its preservation reviews so as to facilitate coordination among reviewing agencies, streamline parallel processes, and avoid unnecessary duplication of effort.
- 607.3 District agencies are required to obtain applicable District of Columbia building permits. If a historic property is involved, the permit application is subject to preservation review under §§ 6-1104 through 6-1107 of the Act.
- (a) Compliance with the procedures in this chapter should facilitate, but does not constitute compliance with, the requirement for building permit review.
 - (b) District agencies shall comply with the permit review requirement by following the procedures in Chapters 3 and 4.
- 607.4 Pursuant to Executive Order 3524 (July 28, 1921), the District government is required to seek advice from the Commission of Fine Arts on exterior alteration or new construction of public buildings, important plans for parks, and major public works. Depending on the nature and location of a project, the District government may also be required to seek either approval or advice from the National Capital Planning Commission. District agencies shall coordinate their CFA and NCPC reviews with the SHPO review under this chapter.

608 PROJECTS SUBJECT TO SECTION 106 REVIEW

- 608.1 If a District undertaking is subject to a substantially equivalent review under Section 106 of the National Historic Preservation Act, the SHPO may provide its comments on the undertaking by following the Section 106 process as provided in 36 CFR Part 800.
- 608.2 The SHPO may accept a District agency's initiation of the Section 106 review process as an initiation of the compliance process in this chapter.
- 608.3 If the SHPO determines that the Section 106 review will satisfy the requirements of this chapter, the SHPO shall so notify the District agency in writing. The District agency may then comply with this chapter by completing the Section 106 review process as provided in 36 CFR Part 800.
- 608.4 If a District agency initiates Section 106 review of an undertaking, but the SHPO believes that review would be insufficient to constitute compliance with this chapter, the SHPO may require a separate review under this chapter for any of the following reasons:
- (a) the District involvement in the project is substantially greater than the federal involvement;

- (b) the District agency has not established clear authority to complete the Section 106 review on behalf of the relevant federal agency; or
- (c) any other circumstance exists to question the adequacy of the Section 106 process for achieving compliance with this chapter.

608.5 If the SHPO requires a separate preservation review under this chapter, it shall notify the agency in writing, and the agency shall follow the procedures in this chapter as described in §§ 612 through 619.

609 PROJECTS INVOLVING DESIGNATED HISTORIC PROPERTY

609.1 If a District undertaking involves a designated historic landmark or historic district in the D.C. Inventory, the responsible District agency may comply with the requirements of this chapter by following the procedures for conceptual design review and permit review in Chapters 3 and 4.

609.2 The SHPO may accept a District agency's filing of an application for conceptual design review or permit review as provided in Chapter 3 as initiation of the consultation process in this chapter.

609.3 If the SHPO comments on the undertaking through the conceptual design review or permit review process, its comments may encompass the same scope normally addressed under this chapter or Section 106 regulations (36 CFR Part 800), and may specifically include comments on the following:

- (a) effects on eligible archaeological sites and significant interior features; and
- (b) direct or indirect effects on historic or eligible properties in the surrounding area (the area of potential effect).

609.4 If an undertaking involves the type of delegated project described in § 320, or is otherwise relatively minor in nature, the SHPO may comment on the undertaking through its review and clearance of the permit application.

609.5 Although the SHPO may comment on an undertaking submitted as a permit application, District agencies are reminded of the requirement in the Act to consult with the SHPO before the expenditure of funds for design and before seeking the permit for an undertaking. Each District agency is encouraged to follow the early consultation procedures in §§ 602, 604, and 605, and if appropriate to enter into a programmatic agreement with the SHPO as provided in § 611 in order to avoid submission of projects at the building permit stage.

609.6 If the SHPO comments on an undertaking through the conceptual design review or permit process, the District agency fulfills its responsibilities under this chapter by implementing the undertaking in accordance with the issued building permit, including any terms and conditions attached by the SHPO.

610 PUBLIC SAFETY FACILITIES

610.1 If a District undertaking involves the rehabilitation or new construction of a public safety facility, the SHPO may provide its comments to the responsible District agency under the procedures provided in Section 9a of the Act, as amended (D.C. Official Code § 6-1108.01), and as further described in Chapters 3 and 4.

610.2 If an undertaking involves a public safety facility, the SHPO may accept a District agency's filing of an application for conceptual design review as provided in Chapter 3 as initiation of the consultation process in this chapter.

610.3 Any agency with responsibility for the rehabilitation or construction of public safety facilities is strongly encouraged to follow the procedures for early coordination, project planning, and public involvement described in §§ 602, 604, 605, and 607.

611 PROGRAMMATIC AGREEMENTS

611.1 A District agency may comply with the preservation review requirements of this chapter by entering into a programmatic agreement with the SHPO establishing a customized review process for certain undertakings.

611.2 Any District agency with responsibility for repetitive undertakings involving routine or minor work on properties is strongly encouraged to develop a programmatic agreement with the SHPO.

- (a) The purpose of such agreements is generally to simplify or streamline the review process for undertakings that are routine, minor, repetitive, or unlikely to have an effect on historic or eligible properties.
- (b) A programmatic agreement may categorize a District agency's undertakings by type and exclude certain categories from the requirement for consultation with the SHPO.

611.3 A District agency and the SHPO may develop a programmatic agreement under either the provisions of this chapter or the Section 106 regulations (36 CFR Part 800). The programmatic agreement becomes effective upon signature by the head of the District agency and the SHPO.

611.4 Once a programmatic agreement become effective, it constitutes the

comments of the SHPO on any District undertaking subject to the agreement. For those undertakings, the District agency fulfills its responsibilities under this chapter by implementing the terms of the agreement.

- 611.5 If an undertaking is subject to an existing Section 106 programmatic agreement, the SHPO shall provide its comments on the undertaking as provided by the terms of that agreement.

612 INITIATION OF CONSULTATION WITH THE SHPO

- 612.1 The District agency responsible for an undertaking shall initiate the preservation review process in writing in a manner commensurate with the nature and complexity of the undertaking. The agency shall provide the SHPO with information sufficient to explain the proposed project and to provide a basis for at least a preliminary assessment of its effects on historic or eligible properties.

- 612.2 The District agency shall include the following information upon initiation:

- (a) identification of the project by address, square and lot number, or location;
- (b) a narrative statement that describes the agency's involvement and fully explains the general purpose, nature and scope of the project;
- (c) identification of any affected buildings or structures, and of any proposed ground disturbance;
- (d) any available historical information on affected buildings or structures, or on the land use and development history of the site;
- (e) supporting documentation such as photographs, maps, and site plans, as applicable; and
- (f) any other documentation that would assist the SHPO in reviewing the project.

- 612.3 The District agency shall state whether or not the undertaking is subject to review under Section 106 of the National Historic Preservation Act, or shall provide any information that would allow the SHPO to make that determination. This information may include:

- (a) a description of any federal involvement in the undertaking, such as federal funding, licensing, or permits; and

- (b) identification of any federal property involved, including federal property under District of Columbia jurisdiction.

612.4 If the SHPO is unable to review an application because of insufficient information, it shall notify the District agency of the additional information required in order to proceed with the review.

612.5 The SHPO shall respond to the District agency within thirty (30) days of receipt of an initiation request. In its response, the SHPO may:

- (a) request additional information;
- (b) recommend that the agency follow an alternate review process in accordance with §§ 608 through 611;
- (c) provide comments on the identification of historic or eligible properties;
- (d) request a consultation meeting or site visit;
- (e) provide preliminary comments or final written comments on the undertaking; or
- (f) give any other direction, as appropriate.

613 IDENTIFICATION OF HISTORIC AND ELIGIBLE PROPERTIES

613.1 After initiating the preservation review process, the District agency shall consult with the SHPO to identify the historic and eligible properties that may be affected by the undertaking. If requested by the District agency, the SHPO may identify these properties for the agency.

613.2 An undertaking may affect more than just the property where the proposed work will occur. Properties that are adjacent or in the surrounding area may be affected by the undertaking. Significant archaeological remains may also exist below the ground surface. The requirement is to identify all historic and eligible properties that may be affected by the undertaking, whether the effect is direct, indirect, adverse, or not adverse, as described in § 615.

613.3 Depending upon the nature and complexity of the undertaking, the District agency and the SHPO may establish a formal area of potential effect as a means to facilitate the identification of historic and eligible properties that should be considered.

613.4 The SHPO shall review the information submitted by the District agency regarding historic or eligible properties that may be affected by the undertaking.

- (a) The SHPO shall either concur with the agency's identification of these properties, or shall respond by indicating how the SHPO's determination differs.
- (b) If the agency accepts the SHPO determination, the agency shall proceed with consultation as provided in § 615.
- (c) If the agency disagrees with the SHPO determination, the parties shall consult in an effort to reach consensus. If this is successful, the agency and SHPO shall proceed with consultation as provided in § 614 or § 615, as appropriate.
- (d) If the agency and SHPO are unable to agree on the identification of historic and eligible properties that may be affected, the SHPO may agree to defer a resolution of the issue and allow the agency to proceed with consultation as provided in § 615, or the SHPO may refer the matter to the Historic Preservation Review Board for its advice.
- (e) The determination of the Board shall be final for the purposes of this chapter. Once the Board has made a determination, the agency and SHPO shall proceed with consultation accordingly.

613.5 If the SHPO determines that there is insufficient information to make a determination regarding the presence of eligible properties, the District agency shall cooperate with the SHPO to provide any additional information that may be available to assist the SHPO in making a determination. The District agency shall provide the SHPO with reasonable access to any property under its control for evaluative purposes.

614 DETERMINATION OF NO AFFECTED HISTORIC OR ELIGIBLE PROPERTIES

614.1 If the SHPO agrees or determines that no historic or eligible properties will be affected by the undertaking, the SHPO shall notify the District agency of this determination in writing. This notification constitutes the SHPO's final comment on the undertaking and the agency has no further responsibilities under this chapter.

614.2 If the District agency and the SHPO agree that the undertaking may affect historic or eligible properties, the District agency shall proceed with further consultation as provided in § 615.

615 ASSESSMENT OF EFFECTS

615.1 After identifying the historic or eligible properties that an undertaking may

affect, the District agency shall make a good faith effort, in consultation with the SHPO, to identify and assess the nature of those effects.

615.2 Effects on historic or eligible properties may be direct or indirect.

- (a) A direct effect is one that physically alters the property.
- (b) An indirect effect is one that changes the setting or surroundings of the property through the introduction of physical or environmental features like new buildings or traffic, or the removal of physical or environmental features like landscaping or historic context. A change in ownership that affects the level of protection afforded to a historic property is also an indirect effect.

615.3 An undertaking may have effects that are adverse, not adverse, or beneficial.

615.4 An adverse effect may be significant or relatively minor in nature. An adverse effect on historic or eligible property may include, but is not limited to:

- (a) Physical destruction of or damage to all or part of a property;
- (b) Alteration, repair, rehabilitation, or adaptation of a property in a manner that is not consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68);
- (c) Removal of a property from its historic location;
- (d) Changing the character of the property's use;
- (e) Alteration of physical features in the property's setting that contribute to its historic significance;
- (f) Introduction or removal of a visual or environmental element that diminishes the integrity of a property's significant historic features;
- (g) Neglecting or allowing a property to deteriorate significantly; or
- (h) Transfer, lease, or sale of a property out of District ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance.

615.5 An undertaking may have no adverse effect or a neutral effect on a historic or eligible property. An undertaking that has no adverse effect may include, but is not limited to:

- (e) Transfer, lease, or sale of surplus property with protections adequate to

ensure long-term preservation of the property's historic significance; or

- (f) Rehabilitation of a property in a manner that does not affect its historic features or is otherwise consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68).

615.6 A beneficial effect on historic or eligible property may include, but is not limited to:

- (a) Restoration or substantial rehabilitation of a property for its historic use in a manner that is consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68);
- (b) Adaptation of a property that is no longer viable for its historic use to a compatible new use in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68);
- (c) Stabilization or repair of a neglected or deteriorating property; or
- (d) Removal of inappropriate or incompatible visual or environmental elements that diminish the integrity of a property's significant historic features.

615.7 If the SHPO determines that there is insufficient information to identify or evaluate the effects of an undertaking, the District agency shall provide any additional information that may be available to assist the SHPO in assessing effects.

615.8 If the SHPO determines that design of a project is necessary to assess the effects of the undertaking, the SHPO shall notify the District agency in writing, and the District agency may authorize the expenditure of funds for the development of a conceptual design for further review.

- (a) The SHPO may review the conceptual design on its own or may forward it to the Historic Preservation Review Board for consideration under the procedures in Chapter 3.
- (b) The District agency shall obtain conceptual design approval from the SHPO or Board, as appropriate, before proceeding with or authorizing the expenditure of funds for the development of subsequent phases of the design.

616 DETERMINATION OF NO EFFECT OR NO ADVERSE EFFECT

616.1 If the District agency and the SHPO have assessed the possible effects of an

undertaking and the SHPO agrees that it will not affect, or will have no adverse effect on historic or eligible properties, the SHPO shall notify the agency of this determination in writing. This notification shall constitute the SHPO's final comment on the undertaking and the District agency shall have no further responsibilities under this chapter.

616.2 If the District agency or the SHPO determines that an undertaking would have an adverse effect on historic or eligible properties and the SHPO identifies simple revisions or conditions that would allow a determination of no adverse effect, the SHPO shall notify the agency of the necessary conditions.

(a) If the District agency agrees to implement the undertaking with the recommended revisions or conditions, the SHPO shall provide its comments with these conditions in writing. This notification constitutes the SHPO's final comment on the undertaking. Implementation of the undertaking with the revisions or conditions fulfills the District agency's responsibilities under this chapter.

(b) If the District agency does not agree to implement the undertaking with the recommended revisions or conditions, it shall consult further with the SHPO in accordance with § 618.

617 DETERMINATION OF NET BENEFIT

617.1 If the District agency and the SHPO have assessed the possible effects of an undertaking, and the SHPO determines that the historic preservation benefits of the undertaking with any appropriate revisions, conditions or mitigation, would clearly and substantially outweigh relatively minor adverse effects, the SHPO may make a determination that the project achieves a net historic preservation benefit. This determination shall not be used when SHPO determines that the undertaking would involve a significant adverse effect.

617.2 If the SHPO makes a determination of net benefit, the SHPO shall notify the District agency in writing of its determination and any revisions, conditions or mitigation that may be necessary to secure the net beneficial effects.

(a) If the District agency agrees to implement the undertaking with any revisions, conditions or mitigation necessary to secure the beneficial effects, the notification of net benefit constitutes the SHPO's final comment on the undertaking. Implementation of the undertaking with any identified revisions, conditions or mitigation fulfills the agency's responsibilities under this chapter.

(b) If the District agency does not agree to implement the undertaking with the recommended revisions, conditions or mitigation, the agency shall consult further with the SHPO in accordance with § 618.

617.3 If the District agency or the SHPO determines that any aspect of the undertaking would have a significant adverse effect on a historic or eligible property, the agency shall consult further with the SHPO in accordance with § 618.

618 RESOLUTION OF ADVERSE EFFECTS

618.1 If a proposed undertaking would constitute an adverse effect on historic or eligible property that cannot be addressed under §§ 616 or 617, the District agency shall consult further with the SHPO to develop alternatives or modifications to the undertaking that would avoid, minimize, or mitigate the adverse effect.

618.2 The District agency and SHPO shall first attempt to avoid the adverse effect, and if it cannot be avoided, then seek ways to minimize and/or mitigate the adverse effect.

618.3 If the District agency and SHPO agree upon how to resolve an adverse effect, they shall execute a memorandum of agreement to document the results of consultation and guide the implementation of the undertaking. The signed memorandum of agreement constitutes the SHPO's final comment on the undertaking. Implementation of the undertaking in accordance with the terms of the memorandum of agreement fulfills the agency's responsibilities under this chapter.

618.4 The District agency and SHPO shall consult in a manner appropriate to the nature and magnitude of the adverse effect, and shall develop and consider a reasonable range of alternatives or modifications to the undertaking that would avoid, minimize, or mitigate the adverse effect. If the District agency and the SHPO have engaged in sustained good faith consultation, but are unable to reach agreement on resolution of adverse effects, either party may conclude consultation as provided in § 619.

619 TERMINATION OF CONSULTATION

619.1 The District agency or the SHPO may terminate consultation if either party determines after good faith consultation that further attempts to resolve the adverse effects of an undertaking will not be productive. The party terminating consultation shall notify the other party and state its reasons for terminating in writing.

619.2 If consultation is terminated, the SHPO shall refer the matter to the Historic Preservation Review Board for a public hearing on the undertaking.

619.3 Not less than ten (10) days after termination, the District agency shall submit

an application for concept review by the Board as provided in Chapter 3, along with the following information:

- (a) A statement describing any alternatives the agency considered to avoid, minimize, or mitigate potential adverse effects on the historic or eligible property;
- (b) Concept plans for any alternatives the agency considered; and
- (c) any other information pertinent to the Board's review.

619.4 The SHPO shall schedule the hearing by the Board to occur within forty-five (45) days after termination. Not less than fifteen (15) days before the Board meeting, the SHPO shall give notice of the meeting by U.S. or electronic mail to all those listed on the public mailing list described in Chapter 32.

619.5 If the affected property is a historic property, the Board shall provide its comments on the undertaking.

619.6 If the affected property was considered an eligible property during consultation, the Board shall make a formal determination regarding whether the property meets one or more of the criteria for designation in the D.C. Inventory of Historic Sites.

- (a) If the Board determines that the property does not meet any of the criteria, the District agency has no further responsibilities to consider the effects of the undertaking on the property.
- (b) If the Board determines that the property meets one or more of the criteria, it shall provide comments on the undertaking.

619.7 Within fifteen (15) days of the Board hearing, the SHPO shall provide final written comments to the District agency. The SHPO's comments shall incorporate the comments of the Board.

619.8 The head of the District agency shall take the SHPO's comments into account in reaching a decision on the undertaking.

619.9 Within thirty (30) days of receipt of the SHPO's final comments, the head of the District agency shall respond to the SHPO in writing. The response shall indicate how the agency has taken the SHPO comments into account and state the rationale for the agency's final decision on the undertaking.

619.10 Implementation of the undertaking in accordance with the terms of the District agency's final response fulfills the agency's responsibilities under this chapter.

DEFINITIONS

Adverse effect: An alteration that is incompatible with or detracts from the characteristics that qualify a property for inclusion in the D.C. Inventory of Historic Sites, or that is inconsistent with the purposes of the Act.

Area of potential effect: The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist. The area of potential effect is influenced by the scale and nature of an undertaking and may be different for different kinds of effects caused by the undertaking.

Beneficial effect: An alteration that enhances the characteristics that qualify a property for inclusion in the D.C. Inventory of Historic Sites.

District undertaking or District of Columbia undertaking: A project of the District of Columbia government that involves or contemplates demolition, alteration, subdivision, or new construction affecting a property owned by or under the jurisdiction of a District of Columbia agency, including an independent agency.

Memorandum of agreement: A document that records the terms and conditions agreed upon to resolve the adverse effects of an undertaking on historic and eligible properties.

Preservation review process: For the purposes of this chapter, the process required by Section 9b of the Historic Landmark and Historic District Protection Act of 1978, as amended (D.C. Official Code § 6-1108.02), and further defined in this chapter.

Project of the District of Columbia government or District government project: Any of the following carried out by, or on behalf of the District of Columbia government: 1) repair, restoration, rehabilitation, or construction of buildings, structures, public works, or parks; 2) site work or ground-disturbing activity; 3) leasing, sale, or transfer of District-owned property for construction or development; or 4) any other construction work. A request for proposals or expressions of interest, master plan, facilities plan, or similar planning activity is not considered a District government project.

Programmatic agreement: A document that records the terms and conditions agreed upon to resolve the potential adverse effects of an agency program, repetitive undertakings of a similar nature, or a complex undertaking.

Significant adverse effect: An adverse effect that greatly detracts from the

characteristics that qualify a historic property for inclusion in the D.C. Inventory of Historic Sites, and may be irreversible; or a group of adverse effects that collectively have the same impact.

CHAPTER 99 DEFINITIONS

Alter or Alteration: Any of the following:

- (a) A change in the exterior appearance of a building or structure or its site, not covered by the definition of demolition;
- (b) A change in any interior space that has been specifically designated as a historic landmark;
- (c) The painting of unpainted masonry on a historic landmark or on a façade restored as a condition of a permit approved pursuant to this Act; or
- (d) Excavation or action disturbing the ground at an archaeological site listed in the District of Columbia Inventory of Historic Sites or an archaeological site identified as a contributing feature in the designation of a historic landmark or historic district.

Eligible property: A property that is not a designated historic property but which the SHPO has determined is likely to meet one or more of the criteria for designation in the D.C. Inventory of Historic Sites.

Public safety facility: A fire station, police station, or any other building or structure owned by the District of Columbia used for public safety operations, but excluding facilities used primarily for administrative functions.

Section 106: Section 106 of the National Historic Preservation Act (16 U.S.C. 470f)