

Rule 4. HISTORIC SITES AND THE ACT 250 PROCESS

4.0 Authority and Purpose

This Rule 4 is promulgated pursuant to the authority granted to the Division for Historic Preservation (the "Division") by 22 V.S.A. § 723(5) and (10) and sets forth the Division's process for reviewing projects under Criterion 8 of Act 250, 10 VSA § 6086(a)(8), and 30 VSA § 248. This Rule is only binding upon the Division and any applicant who voluntarily seeks the cooperation of the Division, the SHPO, or the Advisory Council under the Rule. It does not impose any obligation upon, or substantively or procedurally affect, the District Environmental Commissions, the Public Service Board, or the Environmental Court.

Criterion 8 of Act 250, 10 VSA § 6086(a)(8), directs District Environmental Commissions to take into account the effects of proposed projects on "historic sites" in deciding whether to issue an Act 250 permit. Because Title 30 of VSA § 248 directs the Public Service Board (PSB) to use the Act 250 criteria during review of applications for Certificates of Public Good, these rules will be used by the Division in front of the PSB in the same manner in which they are used in front of District Commissions.

4.1 Relevant definitions. These are repeated from Rule 2 for the convenience of the reader.

4.1.1 "**Adverse effect**" means, for the Division's review purposes, a change in a historic property's or historic resource's integrity of location, design, setting, materials, workmanship, feeling, and association resulting from: physical destruction, damage or alteration; introduction of incongruous or incompatible effects such as isolation of a historic structure from its historic setting; new property uses; or new visual, audible or atmospheric elements.

4.1.2 "**Area of potential effects**" means the geographic area or areas within which an undertaking may directly or indirectly cause changes in the character or use of historic properties, should such properties exist. Such area shall include the project area, and may include additional areas outside of the project area. Identification of the area of potential effects shall be determined after consideration of the scale and nature of an undertaking, and may vary with different kinds of effects caused by the same undertaking.

4.1.3 "**Archeological site**" or "site" means any aboriginal mound, fort, earthwork, village location, burial ground, historic or prehistoric ruin, mine, cave, or other location which is or may be a source of important archeological data as defined in 22 V.S.A. § 701(8).

4.1.4 "**District**" means a group of buildings, sites, structures, objects, and/or landscape features linked together by a common history and development and forming a cohesive and recognizable entity such as, but not limited to, a historic village center, residential neighborhood, adjacent historic farms along a rural valley, the archeological remains of such areas, or a group of archeological sites in a given geographic area.

4.1.5 "**Effect**" means an alteration of a characteristic or characteristics of a historic property which characteristics may qualify such property for inclusion in the State or National Register.

4.1.6 “**Field inspection**” means visiting a project area to quickly assess the physical landscape for archeological sensitivity, to identify areas that have been significantly disturbed in the past, and to identify potential archeological issues that should be considered during project planning.

4.1.7 “**Field investigation**” means the study of the traces of human culture at any land or water site by means of surveying, digging, sampling, excavating, removing surface or subsurface objects, or going on a site with that intent as defined in 22 V.S.A. § 701(4).

4.1.8 “**Historic site**” means any site, structure, district or archeological landmark which has been officially included in the National Register of Historic and/or the State Register of Historic Places or which is established by testimony of the Vermont Advisory Council on Historic Preservation as being historically significant, as defined in 10 V.S.A § 6001(9).

4.1.9 “**Historic property**” or “**historic resource**” means any building, structure, object, district, area, or site that is significant in the history, architecture, archeology or culture of this state, its communities, or the nation as defined in 22 V.S.A. § 701(6).

4.1.10 “**Historically Significant**” means an historic property or historic resource that is eligible for the State Register or National Register.

4.1.11 “**National Register criteria**” means the criteria set forth at 36 CFR 60.4, used by the Secretary of the Interior and related National Register Bulletins published by the U.S. Department of the Interior, National Park Service to evaluate the qualifications of historic properties for the National Register. On the Internet at: <http://www.nps.gov/history/Nr/regulations.htm>.

4.1.12 “**Predictive model**” means an analytical tool developed and used by professional archeologists to identify the archeological sensitivity of a particular property or landscape. A predictive model predicts where archeological sites are likely to be found based on a clustering of needed human resources such as food, water, shelter, and raw materials, and other environmental factors. Predictive models must be approved by the VT Advisory Council on Historic Preservation.

4.1.13 “**Project area**” means for the purposes of review by the Division and the Council of an Act 250 application, the entire area subject to the application, including portions to be developed and those to be left undisturbed.

4.1.14 “**Qualified professional**” means a person who meets the Professional Qualifications Requirements published by the National Park Service at 36 CFR 61, as may be supplemented by the SHPO's policies from time to time. In addition, a Qualified Professional may be a professional who meets the standard for historic preservationist or other discipline, as adopted and published by the Division and/or the National Park Service. On the Internet at: http://www.nps.gov/history/local-law/arch_stnds_9.htm.

4.1.15 “**Resource**” means any building, structure, object, district, area or site which is the subject of evaluation, though not yet identified as significant.

4.1.16 “**Secretary of Interior Standards**” means the Secretary of the Interior’s Standards for the Treatment of Historic Properties, 36 CFR Part 68, July 12, 1995 Federal Register (Vol, 60, No. 133), as they may be amended from time to time, and accompanying Guidelines. The Standards for Rehabilitation will apply to work on buildings, except in unusual cases involving reconstruction or museum-quality restoration of buildings when the Standards for Reconstruction or Restoration will apply. On the Internet at: <http://www.nps.gov/history/hps/tps/standguide/>.

4.1.17 "**Section 106**" means the section of the National Historic Preservation Act that requires each federal agency, and, by extension, any state agency, municipality or other entity using federal money or applying for a federal permit or license for a particular undertaking, to take into account the effects of its actions on historic properties. On the Internet at: <http://www.achp.gov/work106.html>.

4.1.18 "**State Register**" means the State Register of Historic Places, which is the state’s official listing of buildings, structures, objects, districts, and sites that are significant in local, state, and/or national history, architecture, archeology, and culture, as authorized by 22 V.S.A. § 723. On the Internet at: <http://www.leg.state.vt.us/statutes/fullchapter.cfm?Title=22&Chapter=014>

4.1.19 “**Undertaking**” means any project, activity, or program, including action on approval, authorization, license, and permit applications, that can result in a change in the character or use of an historic property or historic resource.

4.1.20 “**Underwater historic property**” means any shipwreck, vessel, cargo, tackle or underwater archeological specimen, including and found at refuse sites or submerged sites of former habitation, that has remained unclaimed for more than ten years on the bottoms of any waters, as defined in 22 V.S.A. § 701(10).

4.1.21 "**Undue adverse effect**" on an historic site means, for the Division’s review purposes, an adverse effect that is not appropriately mitigated or reasonably avoided. The Division considers four factors in determining whether an adverse effect is “undue:

- (1) the failure of an applicant to take generally available mitigating steps which a reasonable person would take to preserve the character of the historic site;
- (2) interference on the part of the proposed project with the ability of the public to interpret or appreciate the historic qualities of the site;
- (3) cumulative effects on historic qualities of the site by the various components of a proposed project which, when taken together, are so significant that they create an unacceptable impact;
- (4) violation of a clear, written community standard which is intended to preserve the historic qualities of the site.

4.2 The Division is a statutory party in the Act 250 process and offers comments to the District Commissions and the Environmental Court¹ on the existence of historic sites within a project’s area of

¹ It’s understood that this process applies to both a District Commission and Environmental Court. However, for convenience all references will be limited to “District Commissions” even though equally applicable to the Environmental

potential effects, the potential impacts of proposed projects on historic sites and, as appropriate, measures to avoid or mitigate adverse impacts to historic sites. The Advisory Council on Historic Preservation (Advisory Council) is also a statutory party in the Act 250 process and may evaluate the significance of resources in accordance with Rule 4.1.8.

4.3 Pre- application project planning.

The Division encourages applicants to contact it as early as possible in the planning stages of the undertaking, preferably before filing their application, to identify and discuss potential historic and archeological concerns. Potential impacts on historic sites are more easily resolved the earlier they are identified. A qualified historic preservation or archeological professional can provide valuable assistance in addressing potential impacts and minimizing project delays. The Division encourages a person to implement Rule 4.12 (see below) at his or her option prior to applying for an Act 250 permit. This is the most efficient method for working out historic preservation issues early in the process.

4.4 Act 250 projects that may have federal Section 106 jurisdiction. An Act 250 project may be subject to Section 106 review under the National Historic Preservation Act if it contains federal funding, or requires a federal permit or license. Such a project is subject to similar standards but different rules and requirements than an Act 250 project without federal involvement. The Division encourages an Act 250 applicant whose project is or may be subject to federal Section 106 review to contact the Division at the earliest stage of project planning to ensure that the federal requirements are met, avoid redundant tasks, and minimize delays.

4.5 Introduction

4.5.1 Scope of rules. This Rule delineates the responsibilities of, and establishes procedures for the State Historic Preservation Officer (SHPO), the Division and the Advisory Council concerning the Act 250 process. This Rule imposes obligations on the Division and on any Act 250 applicant who voluntarily seeks the cooperation of the SHPO, the Division, or the Advisory Council on testimony to the District Commission under this Rule. This Rule encourages collaboration resulting in timely and predictable participation in the Act 250 process by the SHPO, the Division, and the Advisory Council, and operates independently of the Act 250 rules that govern a District Commission's consideration of an application for a land use permit.

4.5.2 Pre-filing and post-filing Division consultation. An applicant may consult the Division as outlined in these rules before or after filing an application.

4.5.3 Applicability of these rules to a project. This Rule shall apply to the Division and any applicant who voluntarily seeks the cooperation of the SHPO, the Division, or the Advisory Council under this Rule when the applicant's project may affect historic resources. Generally, a project may have the potential to affect historic resources when there exists:

- (1) A building, structure, district, or archeological site in the project area or area of potential effects that is listed on the State or National Register of Historic Places;

- (2) A building, structure, district, or site in the project area or area of potential effects that is 50 years old or older;
- (3) A possibility of ground disturbance in the project area or area of potential effects that may affect known or as-yet-undiscovered archeological sites.
- (4) A possibility of ground disturbance in the project area or area of potential effects that may affect known or as-yet-undiscovered underwater historic property.

4.5.4 Participation and Delegation. Pursuant to 22 V. S.A. § 742(a)(8), the Advisory Council has delegated to the SHPO, or his or her designee, performance of certain functions in the Act 250 process with respect to buildings, structures, objects, districts, areas and archeological sites, including but not limited to:

- (1) Identification of historic significance, including application of the State Register criteria in order to provide testimony on behalf of the Advisory Council to a District Commission on whether a resource is historically significant;
- (2) An applicant may request that the Advisory Council evaluate a resource's historic significance. SHPO or designee may present evidence to aid the Advisory Council in evaluating a building, structure, object, district, area or archeological site's historic significance;
- (3) The Advisory Council may request that the SHPO or designee present testimony about its evaluation of significance to the District Commission.
- (4) For any reason, an applicant, the SHPO, or the chairperson of the Advisory Council may request that the Council evaluate the historic significance of a resource under Rule 4.

4.5.5 Time limits. The Division shall evaluate the historic significance of a resource and effect of a project on a Historic Site, if any, within 45 days of receipt of sufficient information from the applicant. The Division shall, within 15 days of receipt of such information determine whether additional information is necessary for the evaluation, and request such additional information from the applicant. The Division shall complete its evaluation within 30 days of receipt of such additional information from the applicant. These time limits may be extended for archeological evaluations as reasonably required by winter conditions.

4.5.6 Programmatic review. As permitted under rules of the NRB or PSB, the SHPO may negotiate written programmatic agreements for the review of large numbers of similar projects proposed by the same applicant, or for the review of a single project affecting numerous resources. Such programmatic agreements shall include review by qualified professionals.

4.5.7 Revised Project Plans. An applicant shall submit to the Division for further review and comment any revisions to its project plans currently under review. The timeframes set forth at Rule 4.5.5 shall apply with respect to the submission of revised plans.

Rules 4.6 to 4.19 Review Process.

4. 6. Criteria used for determination of “Historic Site”. 10 V.S.A. § 6001(9) defines “historic site” as “any site, structure, district or archeological landmark which has been officially included in the National Register of Historic and/or the State Register of Historic Places or which is established by testimony of the Vermont Advisory Council on Historic Preservation as being historically significant.” For the Division’s review purposes, the historical significance of a resource can be determined by evaluation under the State and National Register criteria used to determine if a resource is eligible for listing on the State or National Registers. The State and National criteria are identical.

Criterion A: Sites that are associated with events that have made a significant contribution to the broad patterns of our history.

Criterion B: Sites that are associated with the lives of persons significant in our past.

Criterion C: Sites 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.

Criterion D: Sites that have yielded, or may be likely to yield, information important in prehistory or history.

4. 6.1 Challenges associated with Archeological Sites. Vermont’s archeological sites include the remains of at least 12,000 years of human history, much of it pertaining to the state’s Indigenous people and cultures. This archeological heritage lies buried within the soil or has low visibility above the ground. Site discovery and documentation require field inspections and, often, field investigations to document and recover sufficient information to determine that a site may yield information important in prehistory or history.

4.7. Act 250 Historic Preservation Review. When planning a project an applicant should provide to the Division sufficient information for an evaluation of the project's potential impacts on an historic site. Sufficient information should include a project summary; information on the location, history, environmental character, existing buildings and structures, current and past land use, and potential project impacts to an historic site; and other relevant information including, but not limited to, photographs, plans, and maps. An applicant who is also submitting information for review under Section 106 may substitute applicable Section 106 documentation to aid in the Division’s review.

4.7.1 Division Review. The Division will review the applicant's information in accordance with the time limits set out in Rule 4.5.5. The Division may request in writing that the applicant provide more information within the time limits established under 4.5.5 of this Rule.

4.8 Area of Potential Effects. The undertaking’s area of potential effects will be identified by the Division or in consultation with the applicant’s qualified professional.

4.9 No Effect on Historic Sites. The SHPO will notify the applicant and, where appropriate, the District Commission in writing within the time limits established under 4.5.5 of this Rule for

receiving sufficient information from the applicant to determine there is no effect on historic sites.

4.10 Historic Properties Listed in State or National Register. The Division or the applicant's qualified professional will determine if any building, structure, object, district, area or archeological site in the area of potential effects is listed in the State or National Register. The Division alone, or in consultation with the applicant's qualified professional, will evaluate the potential impacts of the undertaking on a listed historic site.

4.11 Historic Buildings, Structures, Objects, Districts, and Landscapes Not Listed in State or National Register.

4.11.1 If the area of potential effects contains a building, structure, object, district or landscape that is 50 years old or older, the SHPO will apply the State Register criteria to determine whether the resource is historically significant. The SHPO may ask the Advisory Council to review the historic resource and list it in the State Register.

4.11.2 If the applicant disagrees with the SHPO's determination under Rule 4.11.1, the applicant may, pursuant to Rule 4.14 (see below), request that the Advisory Council determine whether or not the resource is historically significant. The Advisory Council will evaluate historic significance within the timeframes established in Rule 4.14. The Division will submit the Advisory Council's determination to the District Commission.

4.11.3 If the SHPO or Advisory Council concludes that the area of potential effects contains an historic site, the Division will determine the project's potential impacts on the historic site. SHPO will provide testimony supporting its determination of effect to the District Commission.

4.11.4 If the SHPO or Advisory Council determines that the area of potential effects contains no historic site, the Division will notify the applicant in writing of its determination within the time limits established under 4.5.5 of this Rule. If the Advisory Council evaluates the historic significance of a resource, the timeframes in Rule 4.14 shall apply.

4.11.5 An applicant-landowner may request, under Rule 9, that the property be listed on the State Register. The consideration for listing shall follow Rule 9.4.

4.12 Archeological Sites Not Listed in the State or National Register.

A project's area of potential effects may contain as-yet-undiscovered historic sites that may be likely to yield information important in prehistory or history. Identifying historic sites may require research and archeological field investigation. The applicant must produce sufficient information for the District Commission to make a finding of fact and conclusion of law under 10 V.S.A. § 6086(a)(8).

The Division may gather initial information from an Archeological Resource Assessment, as outlined below. Alternatively, the applicant may, at its option, retain a qualified archeological professional to gather that information. If the Division's evaluation supports the need for an archeological field investigation, the SHPO may request the District Commission to require such action and that an applicant retain a qualified archeological professional to conduct it as outlined below. The applicant may

voluntarily, retain a qualified archeological professional to conduct a field investigation without first being required to do so by the District Commission. All archeological studies must meet the SHPO's Guidelines for Conducting Archeological Studies in Vermont (on the Internet at: http://www.historicvermont.org/general/Archeo_guidelines_final_2002.pdf).

4.12.1 Identifying archeological sites. During its review process, the Division may identify an historically significant archeological site that has not been listed on the State or National Register, but may be considered an historic site as a result of testimony from the Advisory Council, Division, or duly authorized designee for purposes delineated in 10 V.S.A. §6001(9).

A number of steps are necessary to identify historically significant archeological sites. Some steps are completed concurrently; other steps are completed only if results of a previous step warrant further investigation.

4.12.1.1 Archeological Resource Assessment

4.12.1.1.1 Background Research. Background Research includes, but is not limited to, review of the Vermont Archeological Inventory, historic maps, and any other relevant sources of information to identify archeological sites. Background Research may be completed either by the Division or the applicant's qualified professional.

4.12.1.1.2 Applying predictive models and conducting Field Inspections.

Approved predictive models may be used to determine the likelihood of archeological sites existing within the project area. Application of a predictive model may be performed either by the Division or the applicant's qualified professional. If such predictive models indicate a high likelihood that historically significant archeological sites exist in the project area, an archeological field inspection may be conducted by the Division or the applicant's qualified professional.

4.12.1.1.3 No historically significant archeological sites. If the SHPO determines that there are no historically significant archeological sites in the area of potential effects due to the low probability of encountering a site, the SHPO will notify the applicant and the District Commission in writing within the time limits established under 4.5.5 of this Rule.

4.12.1.1.4 Information submitted by an applicant's qualified professional. An applicant may submit to the Division a report prepared by its qualified professional documenting the background research, application of predictive models approved by the Advisory Council, and archeological field inspection. The report will meet the SHPO's Guidelines for Conducting Archeological Studies in Vermont. In such a case, the SHPO will determine and recommend in writing to the District Commission within 30 days whether or not the applicant's qualified professional should conduct an archeological field investigation pursuant to Rule 4.12.1.2.1.

4.12.1.2 Archeological Field Investigation

4.12.1.2.1 Confirming presence of historically significant archeological sites. If the Division determines, after the completion of an archeological field inspection, that the project area is likely to contain historically significant archeological sites that cannot be avoided and preserved in-place through appropriate measures, the Division may recommend to the District Commission further archeological investigations. The District Commission may then require the applicant to conduct an archeological field investigation. The purpose of the field investigation shall be to collect evidence sufficient for the District Commission to determine if an archeological site is historically significant. Although a District Commission has no control over an applicant's contractual arrangements, there is a reasonable expectation that in most cases the archeological field investigations will be completed within 120 days of the determination, except that an additional 30 days may be required when the determination is made during the months of November, December, January, and February.

4.12.3 Evaluating if an archeological site is historically significant.

4.12.3.1. Application of the State Register criteria. The historic significance of an archeological site is determined under the State Register criteria A, B, C, and/or D. Archeological sites are most often evaluated under Criteria A, C, and D as set forth in Rule 4.6.

4.12.3.2 No historically significant archeological sites. If the SHPO determines that there are no historically significant archeological sites in the area of potential effects, the SHPO will notify the applicant and the District Commission in writing within 45 days of receipt of sufficient information to make such determination.

4.12.3.3 When background research, predictive model, field inspections or field investigations provide sufficient evidence, the SHPO will apply the State Register criteria. A determination by the SHPO that the project area includes an archeological site which meets the State Register criteria means that the archeological site may be found is historically significant by the District Commission and the SHPO will submit evidence to the District Commission to that effect.

4.12.3.4 Pursuant to 10 V.S.A. § 6088(b), if the District Commission makes a preliminary finding or any other communication suggesting there is no historic site within the project's area of potential effects and the Division disagrees, the Division then has the burden of persuading the District Commission there is an historic site and that the project will have an undue adverse effect on it.

4.12.4 Winter field inspections. If the evaluation occurs when the ground is frozen and/or the area has deep snow cover, the SHPO may inform the applicant that a field inspection will need to wait until weather conditions are appropriate and request that the field inspection be scheduled as soon as weather conditions permit.

4.12.5 Management of Archeological Collections. Archeological collections recovered in the course of field inspections or archeological field investigations are the property of the land owner. The state

encourages the land owner to execute a deed of gift to the Division thereby enabling the collections to be deposited at the Vermont Archeological Heritage Center for care and management in perpetuity in accordance with the Division's policies and procedures. There are collections fees for collections recovered in the course of archeological investigations carried out under federal jurisdictions such as Section 106.

4.13 Mitigation of Adverse Effects on an Historically Significant Archeological Site.

In the event the applicant recommends to the SHPO mitigation measures and permit conditions before the SHPO has evaluated whether or not an archeological site is historically significant, the SHPO will evaluate the project's effects as set forth in Rules 4.15 through 4.20. Archeological site avoidance is the preferred option for mitigating an undue adverse effect.

4.13.1 The SHPO and the applicant may agree at any time on measures the applicant will take to avoid or minimize the undertaking's effect on an archeological site. The SHPO or the applicant's qualified archeological professional will prepare a letter or stipulated agreement that describes in detail all mitigation measures to which the applicant and the SHPO have agreed. The SHPO or applicant will request that the District Commission recognize the letter or agreement and include the agreed upon measures as conditions in any permit that may be issued.

4.14 Referral to the Advisory Council for Determination that a Resource is Historically Significant.

4.14.1 Applicant Request. The applicant may disagree with the SHPO's evaluation that a resource is historically significant. The applicant may then write to the Chairperson of the Advisory Council requesting an evaluation of the resource and submission of testimony to the District Commission.

4.14.2 SHPO and Advisory Council Request. The SHPO or the Chairperson of the Advisory Council may ask the Advisory Council to evaluate the resource and determine if it is historically significant. The SHPO or the Chairperson of the Advisory Council may ask the Advisory Council to list the resource in the State Register pursuant to Rule 9.

4.14.3 Notice of Advisory Council Meeting. The Division will inform the applicant of the date, time and place of the Advisory Council's meeting for determining if the undertaking's area of potential effects contains an historically significant resource. The applicant must submit to the Advisory Council, at the Division's office, 9 copies of any information that the applicant wishes the Advisory Council to consider at least 15 days before the Advisory Council meeting. The SHPO in consultation with the Chairperson of the Advisory Council may waive the 15-day requirement in exceptional circumstances.

4.14.4 The applicant, the SHPO and the Division may present pertinent information at the Advisory Council meeting about any buildings, structures, districts, objects, areas, or archeological sites in the area of potential effects.

4.14.5 The applicant's qualified professional or other representative may present information to the Advisory Council on behalf of the applicant.

4.14.6 The Advisory Council will apply the State Register criteria to determine whether the area of potential effects contains an historic resource that is historically significant.

4.14.7 The Advisory Council will deliberate and, unless it needs more information, will decide whether or not the area of potential effects contains an historically significant resource. The Advisory Council may list an historically significant resource in the State Register.

4.14.8 If the Advisory Council needs more information for determining if the area of potential effects contains an historically significant resource, it will recess the agenda item to a future meeting. The Advisory Council will identify what further information is needed and who shall be responsible for providing it.

4.14.9 Within 15 days after the Advisory Council has adjourned its meeting, the Division will send written notice to the applicant and, where appropriate, the District Commission of the Advisory Council's decision, or its need for more information.

4.14.10 If the Advisory Council finds that the area of potential effects contains a historically significant resource, the SHPO shall determine the effect, if any, of the proposed undertaking, as set forth at Rules 4.15 through 4.20.

4.14.11 If the Advisory Council determines that the area of potential effects contains no historically significant resource, the SHPO will inform the applicant and, where appropriate, the District Commission.

4.14.12 Advisory Council Testimony. If a party challenges a determination by the Advisory Council that a resource is historically significant or that an historic site exists within the project's area of potential effects, the Advisory Council may select an Advisory Council member to provide testimony on its determination to the District Commission.. Alternatively, the Advisory Council may delegate its role in accordance with Rule 4.5.4 to the SHPO or Division to provide testimony on its behalf.

4.15 Evaluation of Effect on an Historic Site.

The SHPO will evaluate and prepare testimony on whether the proposed undertaking will have any effect (as defined in Rule 4.1.5) on the historic site; whether the effect, if any, will be adverse (as defined in Rule 4.1.1); whether the adverse effect, if any, will be undue (as defined in Rule 4.1.21); and whether measures may be taken to effectively mitigate the undue adverse effect to the extent that it is no longer undue. The SHPO's evaluations shall be submitted to the District Commission for a final determination.

4.15.1 The SHPO shall use the Secretary of the Interior's Standards for Rehabilitation (Standards) and accompanying Guidelines to determine adverse effect to buildings, structures, historic districts and areas.

4.15.2 The SHPO shall notify the applicant of his or her determination within 45 days of receiving sufficient information in accordance with the time limits in Rule 4.5.5 to make the determination, unless Rule 4.15.3 applies.

4.15.3 In cases when the Advisory Council finds that the area of potential effects contains an historically significant resource, the SHPO will determine the undertaking's effect on it. The SHPO will notify the applicant in writing of his or her determination within 15 days of the Advisory Council's decision.

4.16 Determination of No Adverse Effect on Historic Buildings, Structures, Districts and Landscapes.

4.16.1 The SHPO applies the criteria of adverse effect, as defined in Rule 4.1.1. If appropriate, and if the historic site is a building, structure, district, or landscape the SHPO will apply the Secretary of the Interior's Standards (Standards). Where the SHPO determines an undertaking has no adverse effect on an historic site, the SHPO will notify the applicant in writing.

4.16.2 The SHPO will make a determination of no adverse effect where the historic site is a building, structure, or district, and proposed plans meet the Standards to result in no adverse effect.

4.17 Determination of No Adverse Effect on Archeological Sites.

4.17.1 A determination of no adverse effect on an historically significant archeological site can be achieved if conditions are stipulated that will result in no adverse effect. The Secretary of the Interior's Standards for Rehabilitation do not apply on historically significant archeological sites.

4.18 Determination of No Adverse Effect with Conditions.

4.18.1 The SHPO may find that the undertaking as proposed will be adverse, and if applicable, does not meet the Standards. In that case the SHPO may recommend to the District Commission that the applicant make changes or take steps to identify alternatives to the proposed project. The SHPO may recommend the applicant hire a qualified professional to identify alternatives. The SHPO may negotiate with the applicant to find a way to modify the undertaking to avoid an adverse effect, and if applicable, meet the Standards. See also Rule 4.13.

4.19 Determination of Adverse Effect.

4.19.1 If the SHPO determines that the undertaking will result in an adverse effect as defined in Rule 4.1.1, the Division will inform the applicant in writing in accordance with the time limits set out in Rule 4.5.5.

4.19.2 The applicant may notify the SHPO with proposed written changes, alternatives, or measures to mitigate the adverse effect of the undertaking.

4.19.3 If the SHPO concurs with the applicant's proposed changes, alternatives, or mitigation measures to eliminate or reduce the adverse effect, the SHPO will inform the District Commission in writing within 15 days of receiving this information and the SHPO will request that the District Commission recognize the agreement and include such measures as conditions in any permit

issued.

4.19.4 If the applicant and the SHPO do not agree on mitigation measures to eliminate or reduce the adverse effect, the SHPO will notify the District Commission in writing and may recommend specific project changes, alternatives or mitigation measures that must be included as conditions in the permit to eliminate or reduce the adverse effect to an Historic Site.

4.20 Determination of Undue Adverse Effect.

4.20.1 Undue adverse effects identified by the SHPO may be eliminated or reduced through appropriate mitigation measures. Undue adverse effects that cannot be mitigated through appropriate measures remain "undue."

4.20.2 In cases in which the SHPO makes a determination that the undertaking will result in an undue adverse effect, SHPO may recommend to the District Commission in writing that it make the same finding and conclusion.