

23 December 1997

Re: NEPA Technical Inquiry 0104 - NEPA and NHPA for Lease Extensions

Dear NEPA Call-In User:

This letter is in response to your June 3, 1997 request for information on National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA), Section 106 requirements for lease extensions. You stated under the old GSA NEPA guidance lease extensions were categorically excluded. Specifically, you would like to know if lease extensions are still categorically excluded from NEPA documentation and if there are any requirements under Section 106 of the NHPA.

SUMMARY OF FINDINGS

NEPA Call-In found current GSA guidance states lease extensions are categorically excluded from NEPA. A lease extension is not subject to the requirements of the NHPA unless it meets the definition of an "undertaking." If the lease extension qualifies as an undertaking, GSA must follow the procedures for implementing Section 106 as outlined in Title 36 Code of Federal Regulations (CFR) Part 800, "Protection of Historic Properties." NEPA Call-In's detailed findings are provided below.

DETAILED FINDINGS

NEPA Call-In reviewed PBS P 1095.4B, "PBS Preparation of Environmental Assessments and Environmental Impact Statements," which is the current GSA guidance for NEPA procedures. GSA Order ADM 1095.1E, "Environmental considerations in decisionmaking" canceled PBS P 1095.4B but states it may be employed on an interim basis until a revised PBS order is issued, which has not been done. PBS P 1095.4B, Chapter 2, "Classes of PBS Actions" (enclosed), states lease extensions, renewals, or succeeding leases are categorically excluded from the requirement to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS), unless there are extraordinary circumstances.

We then reviewed the draft "PBS NEPA Desk Guide" (final draft), May 16, 1997. This guide is pending approval by GSA and the information it contains is subject to change. Chapter 5, "Categorical Exclusions," states that lease extensions, renewals, or succeeding leases are categorically excluded from the requirement to prepare an EA or EIS.

NEPA Call-In then contacted a GSA Advisor, Cultural Resource Compliance, for requirements for lease extensions under Section 106 of the NHPA. Section 106 requires Federal agencies to consider the effects of their actions on historic properties, and give the Advisory Council on Historic Preservation an opportunity to comment. The advisor stated undertakings, are subject to the requirements of Section 106. The NHPA defines an undertaking as a project, activity, or program funded in whole or in part under the jurisdiction of any Federal agency (Title 16 United States Code 470w(7)). Undertakings are defined in the regulations as "any project, activity, or program that can result in changes in the character or use of historic properties" (Title 36 CFR 800.2). The advisor stated GSA's position is, except in extraordinary circumstances, a lease extension on a building less than 45 years old is not an undertaking; nor is a lease extension on a building greater than 45 years if there is no

change in use. However, a lease extension on a building greater than 45 years old where there will be a change in use, qualifies as an undertaking. Procedures for implementing Section 106 are outlined in Title 36 CFR 800.

NEPA Call-In also contacted Mr. John Dendy, Archaeologist, Dynamac Corporation at Fort Riley, Kansas, (913) 239-8788, who added that the NHPA also applies to land lease extensions as well if there is a change in character or an impact to the site.

In a follow up call to you, you stated you are aware of the requirements of Section 106 and have a copy of the regulations.

The materials in this TI have been prepared for use by GSA employees and contractors and are made available at this site only to permit the general public to learn more about NEPA. The information is not intended to constitute legal advice or substitute for obtaining legal advice from an attorney licensed in your state and may or may not reflect the most current legal developments. Readers should also be aware that this response is based upon laws, regulations, and policies in place at the time it was prepared and that this response will not be updated to reflect changes to those laws, regulations and policies.

Sincerely,

(Original Signed)

NEPA Call-In Researcher