

January 1999

Re: NEPA Technical Inquiry 0444 - Letter to SHPO

Dear NEPA User:

This letter is in response to your December 29, 1998 inquiry regarding a proper and complete citation for a finding of "no adverse effect" under Section 106 of the National Historic Preservation Act (NHPA). You stated that GSA is proposing to conduct minor repairs at an historic building in your region, and needs to send a letter to the State Historic Preservation Officer (SHPO) and others.

#### SUMMARY OF FINDINGS

NEPA Call-In reviewed sample NHPA letters on our web site and identified one letter that is appropriate for your needs (enclosed). This letter references Title 36 Code of Federal Regulations (CFR) Part 800.9 (c)(2), "Criteria of effect and adverse effect." NEPA Call-In also obtained a short version of the same letter (enclosed). Our detailed findings are presented below.

#### DETAILED FINDINGS

NEPA Call-In reviewed sample NHPA letters on our web site and identified letter number 11, "To ACHP determining no adverse effect on historic properties", (enclosed) that is appropriate for your needs. This letter references Title 36 CFR Part 800.9(c)(2). You stated you had a copy of that letter from the NEPA Call-In web site.

NEPA Call-In also contacted an Advisor to the GSA Cultural, Environmental and Accessibility Programs, who suggested we could also send you a short version of the same letter contained in the "Environmental Book" electronic trainer, which he is developing with assistance from NEPA Call-In. The "Environmental Book" contains the following instructions for Section 106 review:

"If you decide that the Criteria of Adverse Effect are not met, you can complete Section 106 review with a determination of "No Adverse Effect." This determination must be in writing, and must be concurred in by the SHPO (or Tribal Historic Preservation Officer (THPO)). Other interested parties should be given an opportunity to comment on it, and preferably to concur in it.

Under the 1986 Section 106 regulations, determinations of No Adverse Effect must be sent to the Advisory Council for 30-day review. This requirement may be removed in the regulatory changes now (early 1999) underway, and the Advisory Council does not in fact routinely review No Adverse Effect determinations when they receive them. However, to be strictly in accord with the regulations until they change, you should send the Council a copy of the determination and its supporting documentation.

A determination of No Adverse Effect may be based on conditions that GSA agrees to implement in order to keep adverse effects from occurring or to reduce them to an acceptable level. If such conditions are included, **BE SURE TO PROVIDE FOR THEM TO BE IMPLEMENTED** by including them in appropriate plans, specifications, and budget documents.

[Attached is] a model letter to the Advisory Council documenting a No Adverse Effect

determination. Note that this letter is FIRST SUBMITTED TO THE SHPO or THPO, and perhaps to other parties, for concurrence once you have:

- documented the determination of No Adverse Effect;
- obtained SHPO or THPO concurrence;
- given the Advisory Council a 30-day review opportunity;
- given other interested parties the opportunity to comment;
- NOT received an objection or comment that GSA, the SHPO, or the Advisory Council considers requires rethinking the determination; and
- arranged for implementing any conditions upon which the determination is based."

A copy of the sample letter from the "Environmental Book" was sent to you via e-mail on December 29, 1998.

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