

STATE OF RHODE ISLAND  
HISTORICAL PRESERVATION & HERITAGE COMMISSION

PROCEDURES FOR REGISTRATION AND PROTECTION OF HISTORIC PROPERTIES

Adopted January 9, 2002  
(Replaces previous regulation adopted October 14, 1987)

I. Authorities, Purposes and Participants

- a. Authorities - In 1968, the General Assembly passed enabling legislation to create the Rhode Island Historical Preservation & Heritage Commission (General Laws of Rhode Island 42-45 et seq.). The Commission is an independent agency within the Executive Department and is charged with the responsibility to identify and protect historic properties. Included in this responsibility is the Commission's duty to compile a State Register of historic properties and to advise state and municipal government regarding their activities which may affect historic properties and to issue antiquities permits. These procedures are promulgated in order to establish a uniform process for compliance with RIGL 42-45 et seq.
  1. State Register and Undertaking Review Authority, General Laws of Rhode Island, 42-45-5(a)+(b) - This section authorizes the Commission to establish criteria for evaluating historical, architectural, or cultural sites, buildings, places, landmarks, or areas; and to compile, maintain and publish a state register of historical, architectural, and cultural sites, buildings, places, landmarks and areas. The State, a city or town, or an subdivision or instrumentality thereof, shall not undertake, fund, or license any activity which will encroach upon, damage or destroy, physically, visually, or environmentally, any site, building, place, landmark, or area included in the state register without first obtaining the advice of the Historical Preservation & Heritage Commission. For the purpose of these regulations the Commission has developed a streamlined procedure for determining whether properties meet the criteria for listing in the State Register of Historic Places. Properties which the Commission has determined to meet the criteria for listing are considered to be listed in the State Register for the purposes of review as authorized by section 42-45-5(b) of the Act.
  2. Catalog of State-owned Historic Properties, RIGL, 42-45-5(j) and (k) - These sections authorize the Commission to establish a catalog of buildings, sites, objects, and artifacts of historical, architectural or archaeological interest which are within the custody or jurisdiction of the departments and agencies of state government. State departments and agencies must afford the Commission a reasonable opportunity to issue an advisory on undertakings which will affect properties listed in the catalog.

3. Executive Order No. 35, November 15, 1972 - This executive order directs all executive agencies of state government to assist the Commission to prepare the catalog and to consult with the Commission concerning the preservation or display of all items entered in the catalog.
  4. The Antiquities Act, RIGL, 42-45.1, et seq - The Antiquities Act authorizes the Commission to prescribe rules for the identification, preservation, excavation, study and exhibition of the state's archaeological resources. Before conducting field investigations on any land owned or controlled by the state, its agencies, departments, or institutions, or on the bottoms of navigable waters within the state's jurisdiction in the territorial sea, or on any property designated as a State Archaeological Landmark, parties must secure an antiquities permit from the Commission. In addition when a state or municipal agency undertaking may effect an archaeological property and archaeological survey or data recovery is required, an antiquities permit may be issued as part of the Commission's advisory.
  5. State Administrative Procedures Act - RILG, 42-35, et seq. Pursuant to this authority, the Commission hereby prescribes rules of practice and procedure in fulfilling its review and advisory duties. Such changes and amendments to these rules and regulations will be made from time to time, as in the Commission's opinion, are necessary and in accordance with the Administrative Procedures Act.
- b. Purposes of the State Register - The State Register is an authoritative guide to be used by state and local governments, private groups, and citizens to identify the state's historical, architectural, and cultural resources which are significant and worthy of being preserved.
- c. Purposes of the advisory process - The Commission seeks through the process to accommodate historic preservation concerns with the needs of State undertakings. The process is designed to identify potential conflicts between the two and to help solve such conflicts in the public interest. The Commission encourages accommodation of project needs and historic preservation through consultation among the Agency Official, the Executive Director and other interested persons during the early stages of project planning. The Commission regards the consultation process as an effective means for reconciling the interests of the consulting parties. Integration of the advisory process into the normal administrative process used by agencies for project planning ensures early, systematic consideration of historic preservation issues. To this end, the Commission encourages agencies to examine their administrative processes to see that they provide adequately for the efficient identification and consideration of historic properties, that they provide for participation by the Commission and others interested in historic preservation, that they provide for timely requests for Commission comment and that they promote cost-effective implementation of the process. When impediments are found to exist in the agency's administrative process, the agency is encouraged to consult with the Commission to develop special procedures suited to the agency's needs.

d. Participants in the process

1. Consulting parties - Consulting parties are the primary participants in the process whose responsibilities are defined by these regulations. Consulting parties may include--

- (i) Agency Official - The official representative of an agency with jurisdiction over an undertaking has legal responsibility for complying with the Rhode Island Historic Preservation Act and these regulations.

The agency is responsible for conducting studies and providing information necessary to adequately identify and evaluate affected historic properties and to consider modifications or alterations to the proposed undertaking that could avoid, minimize, or mitigate adverse effects to historic properties. An agency may involve its grantees, licensees, or other parties of interest in the process including providing necessary information; however, an agency may not delegate its responsibilities to comply with the act and these regulations.

If a project requires the approval of two or more State or Municipal Agency Officials, representatives from each agency shall meet with the Executive Director, and the Executive Director may designate one agency to act as the lead agency under these regulations. The lead agency shall take all actions necessary to comply with these regulations.

- (ii) Executive Director - The Executive Director of the Rhode Island Historical Preservation & Heritage Commission coordinates participation in the implementation of the Act and is a key participant in the review process. The role of the Executive Director is to consult with and assist the Agency when identifying and evaluating historic properties, assessing effects upon them and considering alternatives to avoid, reduce or mitigate those effects. The Executive Director makes information already collected by the Commission available to the Agency Official in order to reduce the need for special studies. The Executive Director reflects the interests of the State and its citizens in the preservation of their cultural heritage and helps the Agency identify those persons interested in an undertaking and its effects upon historic properties.
- (iii) Rhode Island Historical Preservation & Heritage Commission - The Commission is responsible for commenting to the Agency Official on any undertaking that may affect historic properties. The Executive Director is the official authorized to carry out the Commission's responsibilities in most cases. However, as outlined below, the Commission may become an active party if the Agency Official and the Executive Director cannot reach agreement or if the Commission makes a timely objection to the agreement.

2. Interested Persons - Interested persons are those organizations and individuals that are concerned with the effects of an undertaking on historic properties. Certain provisions in these regulations require that particular interested persons be invited to become consulting parties under certain circumstances. In addition, whenever the Agency Official and the Executive Director agree that active participation of an interested person will advance the objectives of the review process, they may invite that person to become a consulting party. Interested persons may include-

- (i) Local Governments - Local governments are encouraged to take an active role in the review process when undertakings affect historic properties within their jurisdiction. When a local government has legal responsibility for regulatory compliance participation as a consulting party is required. When no such legal responsibility exists, the extent of local government participation is at the discretion of local government officials, the agency official, and the Executive Director. Local historic district commissions within local governments whose historic preservation program has been certified pursuant to the Commission's certified local government regulations are particularly encouraged to participate in the consultation process and may be delegated responsibilities as may be mutually agreed upon.
- (ii) Applicants for Assistance, Permits and Licenses. When the undertaking subject to review is proposed by an applicant for assistance, a permit or license, the applicant may participate in the process at the request of the Agency Official, including providing necessary information. An applicant may also request to participate in the process in the manner prescribed in these regulations.
- (iii) Indian Tribes - The Agency Official and the Executive Director should be sensitive to the special concerns of Indian tribes in historic preservation issues, which often extend beyond Indian lands to other historic properties. When an undertaking will affect Indian lands, the Agency Official shall invite the governing body of the responsible tribe to be a consulting party and to concur in any agreement. When an Indian tribe has established formal procedures relating to historic preservation, to the extent feasible, the responsibilities of these regulations will be carried out consistent with such procedures. When an undertaking may affect properties of historic value to an Indian tribe on non-Indian lands, the consulting parties shall afford such tribe the opportunity to participate as an interested person.

Traditional cultural leaders and other Native Americans are considered to be interested persons with respect to undertakings that may affect historic properties of significance to such persons.

- (iv) The Public - The Commission values the views of the public on historic

preservation questions and encourages public participation in the process. The Agency Official and the Executive Director should seek and consider the views of the public when taking steps to identify historic properties, evaluate effects and develop alternatives.

Public participation in the review process may be fully coordinated with and satisfied by public participation programs carried out by Agency Officials under the authority of other statutes and regulations. Notice to the public should adequately inform the public of preservation issues in order to elicit public views on such issues that can then be considered and resolved, when possible, in decision-making. Members of the public with interests in an undertaking and its effects on historic properties should be given a reasonable opportunity to receive information and present their views.

## II. Definitions

As used in these rules and regulations:

- a. "Advisory" means the written statement of the Commission's comments and recommendations regarding an undertaking's effect on an historic property. When an undertaking may affect archaeological resources, the Commission may require an antiquities permit.
- b. "Agency" the agency, department, or instrumentality of State government, a city or town, which is responsible for the undertaking or which has custody or jurisdiction over the historic property.
- c. "Agency Official" means the individual who is authorized to act on behalf of the agency.
- d. "Antiquities Act" means RIGL 42-45.1
- e. "Antiquities Permit" means the certificate issued by the Commission to a qualified individual which authorizes excavation, curation, storage, use, or display of archaeological specimens or artifacts.
- f. "Applicant" means the public or private individual or entity whose proposal is the subject of an undertaking or who seeks an antiquities permit.
- g. "Area of the Undertaking's Potential Effects" means the geographic area within which an undertaking may reasonably be expected to cause changes in the character or use of historic properties, if any such properties exist. The boundaries of such area should be determined by the agency official and the Executive Director as early as possible in the planning of the undertaking.

- h. "Chairman" means the Chairman of the Commission, as authorized by the General Laws of Rhode Island, 42-45", or a designee authorized to act for the Chairman.
- i. "Commission" means the Rhode Island Historical Preservation & Heritage Commission as established by the General Laws of Rhode Island, 42-45 et seq.
- j. "Executive Director" means the Executive Director of the Commission as appointed pursuant to the General Laws of Rhode Island 42-45-8, or a designee authorized to act for the Executive Director.
- k. "Historic Property" means:
  1. any district, site, building, structure, or object listed in the State Register. Properties may be listed in the State Register through concurrent listing in the National Register of Historic Places or alternatively for the purposes of these regulations the Commission may determine that properties meet the criteria for registration.
  2. any building, site, object or artifact of historical, architectural, or archaeological interest listed in the catalog of state-owned historic properties; or
  3. any archaeological resource, including specimens, sites, and underwater resources subject to Commission permits or advisories pursuant to the General Laws of Rhode Island 42-45.1 et seq.
- l. "Indian lands" means all lands under the jurisdiction or control of an Indian tribe.
- m. "Indian tribe" means the governing body of any Indian tribe, band, nation, or other group that is recognized as an Indian tribe by the Secretary of the Interior or for which the United States holds land in trust or restricted status for that entity or its members.
- n. "Interested person" means any individual or organization that is concerned with the effects of an undertaking on historic properties.
- o. "Rhode Island Historic Preservation Act" means RIGL 42-45
- p. "State Register" means any district, site, building, structure, or object listed in the register compiled by the Commission in accordance with RIGL 42-45-5(a) and (b). Properties are listed in the state register in accordance with Section III of these regulations.
- q. "State Register Criteria" means the criteria established by the Commission for use in evaluating the eligibility of properties for the State Register.
- r. "Undertaking" means any action which may affect an historic property which is:

1. proposed, authorized, licensed, sanctioned, carried out or funded by the state or any instrumentality or sub-division of state government; or
2. funded by a city or town; or
3. involves an historic property owned, in part or in whole, by the state, a city or town; or
4. involves archaeological excavation on lands or under waters owned or controlled by the State, its agencies or political subdivisions or on any historic or archaeological properties listed on the State register or designated as a State Archaeological Landmark as well as the curation, storage, use or display of archaeological specimens or artifacts recovered from lands or under waters owned or under the jurisdiction of the state.

### III. The State Register

a. Criteria for evaluation for State Register Nomination -

The criteria for listing on the State Register are the same as the criteria developed by the National Park Service for listing on the National Register of Historic Places. The following criteria shall be used in evaluating properties for nomination to the State Register:

1. The quality of significance in Rhode Island history, architecture, archaeology, and culture is present in districts, sites, buildings, structures, and objects of national, state and local importance that possess integrity of location, design, setting, materials, workmanship, feeling and association and
  - (i) that are associated with events that have made a significant contribution to the broad patterns of history, or
  - (ii) that are associated with the lives of persons significant in our past; or
  - (iii) 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; or
  - (iv) that have yielded, or may be likely to yield, information in pre-history or history.
2. Criteria Considerations - Ordinarily cemeteries, birthplaces or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have

achieved significance within the past 50 years shall not be considered eligible for the State Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

- (i) A religious property deriving primary significance from architectural or artistic distinction or historical importance.
- (ii) A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historical person or event.
- (iii) A birthplace or grave of an historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life.
- (iv) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features or from association with historic events.
- (v) A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived.
- (vi) A property primarily commemorative in interest if design, age, tradition, or symbolic value has invested it with its own historical significance.
- (vii) A property achieving significance within the past fifty years if it is of exceptional importance.

b. Nomination Procedures

1. Nominations are prepared under the supervision of the Executive Director of the Commission, and documentation of nominations is reviewed for technical and substantive adequacy and completeness.
2. Upon receipt of an adequate and complete nomination the Executive Director will forward such nomination to the Chairman of the State Review Board who will schedule its review at a meeting of the State Review Board. Upon receipt of a request for determination of National Register eligibility or National Historic Landmark nomination the State Historic Preservation Officer shall act thereon as prescribed in federal regulations.
3. Inclusion in the State Register - A property is included in the State Register when it is entered on the National Register of Historic Places (in accordance with 36 CFR 60); when the National Park Service, Department of the Interior, determines that the

property is eligible for inclusion in the National Register of Historic Places (in accordance with 36 CFR 63); when it is designated by the Secretary of the Interior as a National Historic Landmark (in accordance with 36 CFR 65); ~~or~~ when it is designated a Rhode Island Archaeological Landmark by the Commission; or when it is designated as an historic district by ordinance of a city or town pursuant to RI General Law 45-24.1, provided that:

it is more than fifty (50) years old, and

it is related to a broad theme of the community's history or is a good example of a type, style, or method of construction, and

it possesses sufficient integrity of location, design, setting, materials, workmanship, feeling and association to convey its historical significance. An historic district designated pursuant to RIGL 45.24.1 may include one or more structures.

The procedures for nomination of properties to the State Register by listing in the National Register, by determination of eligibility for listing in the National Register, or by designation as a National Historic Landmark shall be the procedures adopted by the National Park Service as appropriate. Those procedures provide requirements for:

- (i) Documentation of the historic resource to include a description of the property (including an inventory of individual properties included in a historic district nomination), a statement of significance of the property, and appropriate graphic documentation.
- (ii) Notice to owners of the property and to appropriate public officials and an invitation to comment on the nomination.
- (iii) Approval or disapproval of the nomination by the Review Board.
- (iv) Appeal of decisions by the Review Board to nominate or not to nominate a property.

The procedures for nomination to the State Register by designation as an historic district by city or town ordinance pursuant to RIGL 45-24.1 include:

certification by the city or town clerk that the property has been designated under a duly enacted ordinance that is consistent with RIGL 45-24.1 (Historical Area Zoning); and

certification by the Executive Director that the property is more than 50 years old, is related to a broad theme of the community's history or is a good example of a type, style, or method of construction, and possesses sufficient integrity to convey its historical significance. A decision by the Executive Director not to issue certification may be appealed to the Commission.

- c. Publication of the State Register - The Commission shall publish the State Register by maintaining an up-to-date listing of register entries available for public inspection at the Commission's office and by providing a listing of register entries to the Secretary of State updated not less often than every two (2) years. The precise location of registered archaeological sites or any other property for which information about its precise location may endanger its preservation shall be withheld from public inspection, except as the Commission determines the information may be released.

#### IV. The Review Process

##### a. General

1. Scope - The procedure in this subpart guides the Agency Official and the Commission in the conduct of the review process. An alternative method of meeting the obligations of the advisory process is found in section XIII when an agency has established its own procedures for the protection of historic properties or when an undertaking is subject to the provisions of Section 106 of the National Historic Preservation Act.
2. Flexible application - The Commission recognizes that the procedures for the Agency Official set forth in these regulations may be implemented by the Agency Official in a flexible manner reflecting differing program requirements, so long as the purposes of the Rhode Island Historical Preservation Act and Antiquities Act and these regulations are met.
3. Timing - The Agency Official is required to complete the advisory process prior to the approval of the expenditure of any funds on the undertaking or prior to the issuance of any license or permit. The Commission does not interpret this requirement to bar any Agency Official from expending funds on or authorizing non-destructive planning activities preparatory to an undertaking before complying with these regulations, nor to prohibit phased compliance at different stages in planning. The Agency Official should ensure that the advisory process is initiated early in the planning stages of the undertaking, when the widest feasible range of alternatives is open for consideration. The Agency Official should establish a schedule for completing the advisory process that is consistent with the planning and approval schedule for the undertaking.

If the Executive Director declines to participate in reviewing an undertaking, or if the Executive Director does not respond within thirty (30) days to a written request for participation, the Agency Official may conclude that the undertaking will have no effect on historic properties.

b. Identifying Historic Properties

1. Assessing information needs - Following a determination by the Agency Official that a proposed project, activity or program constitutes an undertaking and after establishing the undertaking's area of potential effects, the Agency Official shall--
  - (i) inform the Executive Director about the undertaking and request the Executive Director to review existing information on historic properties potentially affected by the undertaking, including any data concerning the likelihood that unidentified historic properties exist in the area of potential effects; and recommend further actions needed to identify historic properties that may be affected; and
  - (ii) seek information in accordance with agency planning processes from local governments, if applicable, Indian tribes, public and private organizations, and other parties likely to have knowledge of or concerns with historic properties in the area, as appropriate.
2. Locating Historic Properties - The Agency Official and the Executive Director shall determine any need for further actions such as field surveys and predictive modeling to identify historic properties. In consultation with the Executive Director, the Agency Official shall make a reasonable and good faith effort to identify historic properties that may be affected by the undertaking and gather sufficient information to determine whether these properties meet the criteria for listing on the State Register. Efforts to identify historic properties should follow the Secretary of the Interior's standards and guidelines for archaeological and historic preservation. Archaeological investigations may require a permit from the Commission pursuant to the Antiquities Act.

c. Evaluating Historical Significance

1. In consultation with the Agency Official, the Executive Director shall apply the State Register Criteria to properties that may be affected by the undertaking and that have not been previously evaluated for State Register listing. The passage of time, physical changes, or changing perceptions of significance may justify reevaluation of properties that were previously evaluated.

2. If the Agency Official and the Executive Director agree that the criteria are not met, the property shall be considered not eligible.
  3. If the Agency Official and the Executive Director agree that a property meets the criteria, the property shall be considered listed in the State Register for the purpose of the review process.
  4. If the Agency Official and the Executive Director do not agree, or if the Commission so requests, the Commission shall determine whether the property meets the criteria of the State Register.
  5. If the Executive Director does not provide views within 30 days, then the Executive Director is presumed to agree with the Agency Official's determination for the purpose of this subsection.
- d. When no historic properties are found - If the Executive Director and the Agency Official agree that there are no historic properties that may be affected by the undertaking, the Agency Official and the Executive Director shall document the finding and notify the Chairman and any interested persons who have made their concerns known at least fifteen (15) days prior to proceeding with the project. If an objection is made within fifteen (15) days, the Executive Director and the Agency Official shall review the determination and advise the objector of their finding.
- e. Assessing effects when historic properties are found
1. Applying the Criteria of Effect - If there are historic properties that the undertaking may affect, the Executive Director and Agency Official shall apply the Criteria of Effect (section IX) to historic properties that may be affected, giving consideration to the views, if any, of interested persons.
  2. No Effect - If the Executive Director and the Agency Official find the undertaking will have no effect on historic properties, they shall document the finding and notify the Chairman and any interested persons who have made their concerns known at least fifteen (15) days prior to proceeding with the project. If an objection is made within 15 days the Executive Director and the Agency Official shall review the Determination of No Effect and advise the objector of their findings.
  3. When an effect is found - If an effect on historic properties is found, the Executive Director and the Agency Official shall apply the Criteria of Adverse Effect (section ix) to determine whether the effect of the undertaking should be considered adverse.
  4. Determination of No Adverse Effect - If the Executive Director and the Agency Official find the effect on historical, architectural, archaeological or cultural characteristics of the property not to be adverse they shall document the finding and notify the Chairman and interested persons who have made their concerns known at

least 15 days prior to proceeding with the project. In reaching a finding of no adverse effect, the Executive Director and Agency Official may stipulate changes to the project or conditions which will avoid potential adverse effects. If an objection is made within 15 days the Executive Director and Agency Official will review the determination and inform the objector of their finding. If the Chairman objects, and the Agency Official does not agree with changes proposed by the Chairman, then the effect shall be considered as adverse.

5. Determination of Adverse Effect - If the Executive Director and the Agency Official find the effect on the historical, architectural, archaeological or cultural characteristics of historic properties is adverse, they shall initiate the consultation process.

f. Consultation Process

1. Parties to the consultation process - The Executive Director and the Agency Official shall consider alternatives to the project that could avoid, minimize or mitigate adverse effects on historic property. They may invite others to become consulting parties including:
  - (i) The head of a local government if applicable when the undertaking may effect historic properties within the local government's jurisdiction;
  - (ii) The representative of an Indian tribe.
  - (iii) Applicants or holders of grants, permits, or licenses, and owners of affected lands, and
  - (iv) Other interested persons when jointly determined appropriate by the Executive Director and the Agency Official.
2. Documentation - The Agency Official shall provide each of the consulting parties with the documentation set forth in Section VIII and such other documentation as may be developed in the course of consultation.
  - (i) On-Site Inspection. At the request of any of the consulting parties, the Agency Official shall allow an on-site inspection.
3. Informing the public - The Agency Official shall provide an adequate opportunity for members of the public to receive information and express their views. The Agency Official is encouraged to use existing public involvement procedures to provide this opportunity. The Agency Official or the Executive Director may meet with interested members of the public or conduct a public information meeting for this purpose.

4. Consideration of Alternatives - The Executive Director and the Agency Official shall consider prudent and feasible alternatives to the proposed project which could avoid, minimize or mitigate the adverse effect. The Agency Official shall provide to the Executive Director all data and information necessary to identify and evaluate such alternatives.

The Executive Director and the Agency Official shall maintain a record, including a record of sources of information consulted, which documents all alternatives considered during the consultation process.

5. Agreement on Avoidance or Satisfactory Mitigation of Adverse Effect - After a thorough review of the alternatives, the Executive Director and the Agency Official may agree that there is a prudent and feasible alternative that avoids, minimizes or mitigates the adverse effect of the project. Upon such agreement, the Executive Director shall prepare a Memorandum of Agreement describing such alternative and submit the Memorandum to the Agency Official. If the Agency Official signs the Memorandum agreeing that the agency will comply with the measures to eliminate, minimize or mitigate the adverse effect, then the Memorandum shall be signed by the Executive Director and it shall be the Commission's advisory. As appropriate, the Agency Official and the Executive Director may agree to invite other consulting parties to sign the Memorandum also.
6. Acceptance of Adverse Effect - After a thorough review of the alternatives, the Executive Director and the Agency Official may determine that there are no prudent or feasible alternatives to avoid, minimize, or mitigate the adverse effect. Upon such decision, the Executive Director shall prepare an Advisory report of Acceptance of the Adverse Effect and submit such Advisory to the Agency Official.
7. Notice of Agreement provided to the Chairman and interested persons - The Executive Director shall notify the Chairman and any interested persons who have made their concerns known regarding the Memorandum of Agreement or Acceptance of Adverse Effect. If no objection is made within 15 days, the Agency may proceed with the project. If an objection is made by an interested person, the Executive Director and the Agency Official will review their agreement and inform the objector of their finding. If an objection is made by the Chairman, the matter will be scheduled for consideration by the Commission.

g. Consideration of an undertaking by the Commission

1. When the Commission will comment - The Commission will review an undertaking and issue its advisory if the Executive Director and the Agency Official fail to agree or if the Chairman objects within 15 days to an agreement reached by the Executive Director and the Agency Official. The Chairman shall provide prompt notice to the

Agency Official of the Commission's intention to review an undertaking. The Commission shall conduct its review within thirty (30) days of notifying the Agency Official, unless otherwise mutually agreed upon. In reviewing the proposed undertaking, the Commission shall review the information which has already been collected by the Executive Director and the Agency Official in accordance with the requirements of Section VIII and any additional information submitted by the Agency Official, the Executive Director, other consulting parties or by interested persons.

New information must be submitted to the Commission at least seven (7) days prior to the meeting at which the proposed undertaking will be reviewed, unless a shorter time period is approved by the Commission.

The Agency Official shall be invited to attend and participate in the scheduled Commission meeting. Other consulting parties and interested persons shall be notified and may make oral remarks to the Commission at the discretion of the Chairman.

2. Comments of the Commission - No later than twenty (20) days after the Commission meeting, the Commission shall issue its advisory. If there is a consensus, the Commission and the Agency will sign a Memorandum of Agreement.

If the Commission and the Agency sign a Memorandum of Agreement or Acceptance of Adverse Effect, then the Agency may proceed with the undertaking under the terms of the Memorandum. If the Commission and the Agency do not reach agreement, or if the Commission determines that actions by the Agency have precluded meaningful comment and provided no opportunity to consider measures to avoid, minimize, or mitigate adverse effects to historic resources, then the Commission shall issue its advisory to the Governor, and provide a copy to the Agency, stating that the Agency has failed to comply with these regulations and is in violation of the Rhode Island Historic Preservation Act.

## V. Appeal to the Governor

Advisories issued by the Commission in accordance with these procedures shall be followed by the Agency unless there are compelling reasons for not doing so. If the Agency does not agree to comply with the Commission's Advisory, the Agency shall prepare a detailed response explaining such reasons and submit its response, together with a copy of the Commission's Advisory, to the Governor for final determination. The Agency shall submit a copy of such response to the Commission. The Agency may not proceed with the proposed undertaking until a final determination is issued by the Governor. If so requested, the Agency and the Commission shall provide the Governor with additional information. Appeal to the Governor is an administrative remedy and is in addition to any other legal appeal which may be authorized by the Administrative Procedures Act or other statute.

VI. Fulfillment of Terms of a Memorandum of Agreement

When a Memorandum of Agreement, other Commission Advisory or Final Determination by the Governor becomes final, the Agency shall carry out the undertaking in accordance with the terms in order to fulfill the Agency responsibilities under RIGL 42-45. Failure to carry out the terms requires the Agency to resubmit the undertaking to the Commission for comment in accordance with Section IV.

VII. Public Request to the Commission

When requested by any person, the Executive Director shall consider an Agency's activity to determine whether it is an undertaking subject to review in accordance with these regulations. The Executive Director shall advise the person making the request, and the Agency if appropriate, of his finding.

Agencies should consider the concerns of the public; however, an inquiry to the Commission does not suspend action on an undertaking.

If the Executive Director finds that the activity is an undertaking subject to review by the Commission, the Executive Director and the Agency Official shall immediately initiate review in accordance with these regulations, and the Agency shall stop any actions which would preclude the Commission's opportunity to issue its advisory.

VIII. Documentation Requirements

The following documentation requirements provide guidance to the Executive Director and the Agency Official in reviewing an undertaking, and they should document their findings and agreements in writing to the extent appropriate. Complete, written documentation should be provided to the Commission when an undertaking is reviewed by the Commission in accordance with Section IV (g). In the event of an appeal to the Governor, copies of this documentation will be provided for the Governor's review.

- a. Finding of no adverse effect - The purpose of this documentation is to provide sufficient information to explain how the Agency reached the finding of no adverse effect. The required documentation is:
  1. A description of the undertaking, including photographs, maps and drawings, as necessary
  2. A description of the efforts used to identify historic properties;
  3. A description of historic properties that may be affected by the undertaking;

4. A statement of how and why the criteria of adverse effect were found inapplicable;
  5. The views of affected local governments, Indian tribes, Federal agencies, and the public, if any were provided, as well as a description of the means employed to solicit those views.
- b. Finding of Adverse Effect - The required documentation is:
1. A description of the undertaking, including photographs, maps and drawings, as necessary;
  2. A description of the efforts to identify historic properties;
  3. A description of the historic properties, affected by the undertaking;
  4. A description of the undertaking's effects on historic properties.
  5. The views of affected local governments, Indian tribes, Federal Agencies, and the Public, if any were provided, as well as a description of the means employed to solicit those views.
  6. Alternatives or measures which were considered to avoid, minimize, or mitigate adverse effects to historic properties and the reasons why any rejected alternatives or measures were considered not to be prudent and feasible.
- c. Requests for Commission Advisory when there is a failure to agree - The purpose of this documentation is to provide the Commission with sufficient information to make an independent review of the undertaking's effects on historic properties as the basis for informed and meaningful comments to the Agency Official. The required documentation is the same as that required for a finding of adverse effect, and in addition:
1. Documentation of consultation with the Executive Director regarding the identification and evaluation of historic properties, assessment of effect and any consideration of alternatives or mitigation measures;
  2. The planning and approval schedule for the undertaking; and
  3. Copies or summaries of any written views submitted to the Agency Official by other consulting parties or interested persons concerning the effects of the undertaking on historic properties and alternatives to reduce or avoid those effects.

IX. Criteria of Effect and Adverse Effect

- a. Criteria of Effect - An undertaking has an effect on a historic property when the

undertaking may alter characteristics of the property that may qualify the property for inclusion in the State Register. For the purpose of determining effect, alteration to features of the property's location, setting, or use may be relevant depending on the property's significant characteristics, and should be considered. Effects may be direct or indirect.

- b. Criteria of Adverse Effect - An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling or association. Adverse effects on historic properties include, but are not limited to--
  - 1. Physical destruction, damage, or alteration of all or part of the property;
  - 2. Isolation of the property from its setting or alteration of the character of the property's setting when that character contributes to the property's qualification for the State Register;
  - 3. Introduction of visual, audible or atmospheric elements that are out of character with the property or alter its setting;
  - 4. Neglect of a property resulting in its deterioration or destruction; and
  - 5. Transfer, lease, or sale of the property, without adequate provision for its continued preservation.
  
- c. Exceptions - Effects of an undertaking that would otherwise be found to be adverse may be considered as being not adverse for the purpose of these regulations--
  - 1. When the historic property is of value only for its potential contribution to archaeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research, and such research is conducted in accordance with applicable professional standards and guidelines; or
  - 2. When the undertaking is limited to the rehabilitation of buildings and structures and is conducted in a manner that preserves the historical and architectural value of affected historic property through conformance with the Secretary of the Interior's standards and guidelines for rehabilitation, or
  - 3. When the undertaking is limited to the transfer, lease or sale of a historic property, and adequate restrictions or conditions are included to ensure preservation of the property's significant historic features.

X. Properties Discovered During Implementation of an Undertaking

- a. Planning for Discoveries - When the Agency Official's identification efforts in accordance with Section IV (b) and (c) indicate that historic properties are likely to be discovered during implementation of an undertaking, the Agency Official should develop a plan for the treatment of such properties if discovered and include this plan as a condition of the undertaking. Implementing the plan in the event of a discovery will satisfy the requirements of these regulations.
- b. When a Discovery Occurs - During implementation of an undertaking and a plan has not been prepared, the Agency Official and the Executive Director shall immediately consult and:
  - 1. Determine whether the property meets the criteria for inclusion in the State Register; and
  - 2. If the property meets the criteria, they shall consult to seek ways to avoid, minimize, or mitigate adverse effects to the property.

These regulations do not require the Agency to stop work on the undertaking. However, the Agency should make reasonable efforts to avoid or minimize harm to the property until the requirements of this section are met.

## XI. Programmatic Agreements

- a. Application - At the request of an Agency, the Commission shall consider execution of a Programmatic Memorandum of Agreement to fulfill the agency's responsibilities under RIGL 42-45 et seq. for a particular program or class of projects that would otherwise require numerous individual project reviews under these regulations. The Programmatic Memorandum of Agreement may specify categories of projects that shall be exempt from further review or categories of projects where review could be best accomplished on a program-wide rather than individual project basis. Programmatic agreements may be appropriate for programs or projects:
  - 1. When effects on historic properties are similar and repetitive;
  - 2. When effects on historic properties cannot be fully determined prior to approval;
  - 3. When non-state agencies are delegated major decision-making responsibilities; or
  - 4. That involve routine management activities at state agencies.
- b. Consultation Process - The Agency and the Executive Director shall consult to develop a Programmatic Memorandum of Agreement. They may invite others to be consulting parties or to participate as appropriate and shall provide for adequate public participation. Upon agreement, the Executive Director shall draft a Programmatic Memorandum of

Agreement describing the classes of action exempt from further review under these regulations and outlining procedures for review of programs of the Agency under these regulations. If the Agency signs such Programmatic Memorandum agreeing that it will comply with the measures specified to avoid, minimize or mitigate adverse effects to State Register Properties, then the Executive director shall place the proposed Programmatic Memorandum of Agreement on the agenda of a Commission meeting to be held within thirty (30) days and shall notify the Agency and any interested persons who have been identified.

- c. Consideration of the Proposed Programmatic Memorandum of Agreement - The Commission shall review the proposed Programmatic Memorandum of Agreement, and shall also consider any additional information submitted by the Executive Director, the Agency, or by the public. No later than twenty (20) days after the meeting, the Commission shall direct the Executive Director to either sign and execute the Programmatic Memorandum of Agreement on behalf of the Commission, or to revise the Programmatic Memorandum of Agreement in accordance with the recommendations of the Commission and to consult with the Agency in order to develop a revised Programmatic Memorandum of Agreement. If the terms of a programmatic agreement are not carried out or if the agreement is terminated, the Agency Official shall comply with these regulations on a project by project basis.

## XII. Emergency Provisions

When compliance with these regulations would pose a serious threat to public safety, the Executive Director may waive compliance to the extent necessary to protect the public. The Executive Director will promptly inform the Chairman of taking an action under this section, and if the Chairman objects within three (3) days, such emergency action is rescinded.

## XIII. Coordination with other Authorities

- a. To the extent feasible, Agency Officials, the Executive Director, and the Commission should encourage coordination of implementation of these regulations with the steps taken to satisfy other historic preservation and environmental authorities by integrating compliance with these regulations with the processes of environmental review carried out pursuant to other state and municipal statutes and regulations and coordinating any studies needed to comply with these regulations with studies of related natural and social aspects.
- b. The Commission may participate in review and advisory procedures established by other agencies under separate authority, such as the procedures of the Coastal Resources Management Council, the wetlands permitting regulations of the Department of Environmental Management, etc. If in the Commission's judgment participation in other review processes is substantively equivalent to review under these regulations, the Commission may waive its independent review.

- c. When an undertaking involves federal government participation and is subject to review under Section 106 of the National Historic Preservation Act, review of the undertaking in accordance with the Procedures of the Advisory Council on Historic Preservation (36 CFR 800) may satisfy the requirements of these regulations and constitute compliance with the R. I. Historic Preservation Act.

#### XIV. Antiquities Act of Rhode Island

- a. Applicability - The Rhode Island Historical Preservation Commission is authorized under this act to issue permits for archaeological field investigations conducted in Rhode Island. Permits are issued under three general circumstances:
  - 1. When archaeological investigations are associated with an undertaking of a government agency as defined in these regulations, the permit may be issued as part of an advisory.
  - 2. When an archaeological investigation is conducted on land owned or controlled by the state, its agencies, departments, or institutions, or on the bottoms of navigable waters within the state's jurisdiction in the territorial sea.
  - 3. When an archaeological investigation is conducted on a state archaeological landmark.
- b. Applications for permits - Each application for a permit to conduct field investigations shall be filed with the Commission in writing on the standard application form provided by the Commission.
- c. Granting of permits - Permits may be granted by the Commission to persons, organizations, institutions or agencies that are qualified by experience and training, are financially able and are adequately equipped to carry out the proposed field investigations. These field investigations shall be carried out according to the Commission's Standards for Archaeological Survey. A copy of the permit shall be kept at each site or in the general area of investigation in the possession of a duly authorized representative of the permittee.
- d. Denying Permits - Permits will not be issued to applicants who do not meet the requirements of these regulations. A decision by the Executive Director not to issue a permit may be appealed in the manner described in Section IX. g. and Section V of these regulation's.
- e. Ownership and disposition of artifacts - All specimens collected from state-owned lands or submerged bottoms under jurisdiction of the state shall be the property of the state and under the custody of the Commission. All other specimens collected through field or underwater investigations conducted under permit as provided in these regulations shall be under the custody of the Commission until they are claimed by the owner. The

Commission may approve loans and exhibitions, on a short or long term basis of any state-owned historic property to institutions within or outside the state.

f. Restrictions on permits

1. No permit shall be granted to any applicant for a larger area than can be reasonably expected to be adequately investigated within the time limits and other terms of the permit.
2. No objects recovered under the authority of any permit shall be disposed of by gift, sale, discard or in any other way unless the Commission determines that such action is in the interest of the State.
3. Failure to begin work under the terms of the permit within the first third of the life of that permit, or failure to diligently prosecute such work after it has started, or to faithfully comply with any of the provisions of the application or the permit, or of these rules and regulations shall be reason for revocation of the permit and any permit may be revoked for cause at the discretion of the Commission.
4. No permit shall be issued for the disturbance or removal of any antiquities which are, in the opinion of the Commission, part of an archaeological site where the State may be expected to conduct archaeological research except in relation to and as part of that archaeological research.

g. Supervision by the state

1. To afford adequate protection for the interests of the state, it shall be the policy of the Commission to limit the number of permits to be granted to those that can be properly supervised and administered by the duly authorized agents of the state.
2. The Commission by its designated agent may at any and all times visit and be present at any or all field investigation including diving operations, or any other phase of the operation for which a permit has been granted.
3. All permittees shall be required to comply with all reasonable requests or directives addressed to them by the Commission or its designated agent with respect to the operations authorized by said permits.
4. At all times there shall be one person designated by and acting for the permittee in attendance at any site, or present at any phase of the operation being conducted under the permit who shall be responsible for the work and who shall be familiar with the rules, regulations, and directives concerning the work and who shall be responsible for compliance with rules, regulations and directives to insure the preservation of archaeological and historical data.