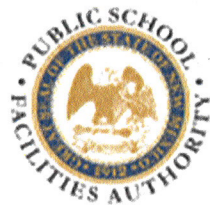


STATE OF NEW MEXICO

PUBLIC SCHOOL FACILITIES AUTHORITY

2016

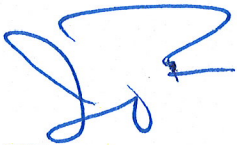
Historic Properties Procedural Policy



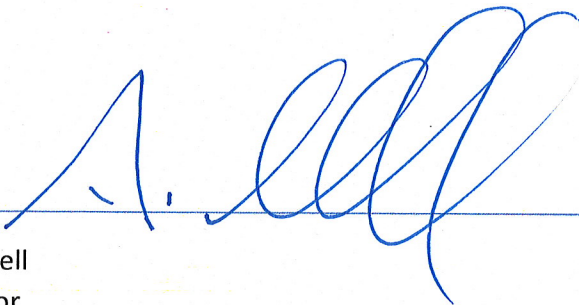
Agreement:

This policy guides planning and design procedures to be followed by school districts, PSFA and the Historic Preservation Division.

Approval



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PSFA Historic Properties Procedural Policy

Introduction

This document provides guidance to School Districts and Project Managers on recommended procedures for addressing any actions involving historic properties listed in the New Mexico State Register of Cultural Properties and/ or listed or eligible for listing (where applicable for sites receiving federal funds) in the National Register of Historic Places that are impacted by the planning, design and construction of school projects funded by the Public School Capital Outlay Council (PSCOC). This guidance will allow projects to meet the requirements of the statutes and regulations promulgated by the United States, the State of New Mexico, and the local authorities. Its purpose is to provide the Public School Facilities Authority (PSFA), and the School Districts, with the tools necessary to appropriately design projects and collaborate with the Historic Preservation Division (HPD) on solutions that minimize adverse effects to cultural properties while meeting required educational objectives.

The PSFA ensures that public school facilities adequately support the State's K-12 public education programs, using funds allocated by the PSCOC and administered by the Public School Facilities Authority (PSFA). The objective of PSFA is to ensure that, statewide, school facilities in New Mexico are safe, adequate, and sustainably operational for their educational purposes. When improvements to facilities must be made, it is possible that they may include changes or alterations to a historic building will be required. This document provides a process for consulting with HPD on ways to minimize adverse effects to listed properties while continuing to uphold PSFA's educational mission.

Historic structures create a link between a community and its past. The process identified in this document will allow PSFA's mission of providing safe and sustainable schools for educational delivery to be balanced with historic preservation policy. In order to foster agreement between the agencies, and to achieve the most effective outcome, this procedural guide is offered to support the planning and design of New Mexico historic schools.

Laws and Regulations

Key statutes and regulations that govern historic properties include:

United States Statutes and Regulations

National Historic Preservation Act of 1966 including amendments.

- 36CFR Part 60 – National Register of Historic Places
- 36CFR Part 61 – Procedures for State, Tribal, and Local Government Historic Preservation Programs
- 36 CFR Part 63 – Determinations of Eligibility for Inclusion in the National Register of Historic Places
- 36 CFR Part 68 – The Secretary of the Interior’s Standards for the Treatment of Historic Properties
- 36 CFR Part 800 - Protection of Historic Properties.

State of New Mexico Statutes and Regulations

New Mexico Cultural Properties Act §§ 18-6-1 through 18-6-17, as amended through 2005. Particular sections of importance include:

- §§ 18-6-7 Historic preservation division; planning; fiscal administration and cooperation for purposes of the cultural properties act.
- §§ 18-6-8 State historic preservation officer; appointment; qualifications; duties.
- §§ 18-6-8.1 Review of proposed state undertakings.

New Mexico Prehistoric and Historic Sites Preservation Act N.M. Stat. §§ 18-8-7 through 18-8-8.with particular emphasis on:

- §§ 18-8-1 Preservation of significant prehistoric or historic sites.
- §§ 18-8-1 Regulation.

Title 4 Cultural Resources Chapter 10 Cultural Properties and Historic Preservation

- Part 3 Procedures of the Cultural Properties Review Committee
- Part 4 Preservation and Maintenance of Registered Cultural Properties
- Part 7 Review of Proposed State Undertakings that may Affect Registered Cultural Properties
- Part 12 Implementation of the Prehistoric and Historic Sites Preservation Act (Defining Prudent and Feasible Alternatives)
- Part 18 State Register of Cultural Properties

Title 14 Housing and Construction Chapter 5 Construction Industries General Provisions

Specific Statutory Citations:

Section 18-8-7 of the New Mexico Prehistoric and Historic Site Preservation Act, NMSA 1978: *No public funds of the state or any of its agencies or political subdivision shall be spent for any program or project that requires the use of any portion of or any land from a prehistoric or historic site listed in the State Register of Cultural Properties or the National Register of Historic Places, unless there is no feasible and prudent alternative to such use, and unless the program or project includes all possible planning to preserve and protect and to minimize harm to the significant prehistoric or historic site resulting from such use.*

Section 18-6-8.1 of Cultural Properties Act, NMSA 1978: *The head of any state agency or department having direct or indirect jurisdiction over any land or structure modification which may affect a registered cultural property shall afford the State Historic Preservation Officer a reasonable and timely opportunity to participate in planning such undertaking so as to preserve and protect, and to avoid or minimize adverse effects on registered cultural properties*

Section 18-6A-5 of Cultural Properties Protection Act, NMSA 1978 (Professional surveys): *The State Historic Preservation Officer (SHPO), in cooperation with the heads of state agencies shall establish a program of professional archaeological and architectural surveys of state lands to identify cultural properties and the heads of state agencies in cooperation with SHPO will exercise due caution to avoid inadvertent damage or destruction of cultural properties.*

Key Definitions

“Cultural Property” is a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

“Registered Cultural Property” is a cultural property that has been placed on the New Mexico (State) Register of Cultural Properties or National Register of Historic Places.

“Significant Prehistoric or Historic Site” is a property listed in the State Register of Cultural Properties or National Register of Historic Places.

“Effect” is any alteration of the registered cultural property’s physical characteristics, including relevant features of its immediate environment, which may diminish the integrity of the property’s location, design, setting materials, workmanship or association. “Effects” include, but are not limited to 1) physical destruction, damage, or alteration of all or part of the property; 2) alteration of the character of the property’s surrounding environment where the character contributes to the property’s eligibility for the State Register 3) introduction of visual, audible or atmospheric elements that are out of character with the property or alter its setting and 4) neglect of a property resulting in its deterioration or destruction. Effects include those caused by the undertaking that occur at the same time and place and those caused by the undertaking that are later in time or farther removed in distance, but are still reasonably foreseeable.”

“Adverse effect” are any modifications to registered cultural properties that may cause changes in character or use, or in the characteristics which made the property eligible to the State Register of Cultural Properties.

“Use” is an adverse effect on a significant historic or prehistoric site or lands of that site, including, but not limited to, partial or complete physical alteration or destruction; isolation of the site from its historic setting; the introduction of physical, audible, visual or atmospheric elements that substantially impair the historic character or significance of the site or substantially diminish the aesthetic value of the site; or the acquisition or taking of a historic or prehistoric site resulting in or designed to result in such alteration, destruction, isolation or introduction of elements that may alter the site. Ordinary maintenance or repair, including code work, which makes no visible alteration to the site and results in no substantial loss of the historic fabric; or emergency repair or stabilization of a significant site, shall not be considered a use within the scope of this definition.

“Listed” means a cultural property that is a “Registered Cultural Property” and has been placed on the official register of either the National Register of Historic Places or the State of New Mexico Register of Cultural Properties on either a permanent or temporary basis through processes and by authorities defined by statutes.

“Maintenance” means the act or process of applying measures which are necessary to maintain the historic integrity and structural soundness of a structure, including but not limited to ordinary operating maintenance.

“Preservation” is the act or process of applying measures to sustain the existing form, integrity, and material of a building or structure, and the existing form and vegetative cover of a site. It may include protective maintenance or stabilization where necessary in the case of archaeological sites.

“Rehabilitation” is the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

“Restoration” is the act or process of accurately depicting the form, features and character of a historic property and its setting as it appeared at a particular period of time by means of the removal of features from other periods in its history and reconstruction of missing features from the restoration period.

Standards and Criteria

The following Standards, consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties, are from 4-10-7 NMAC 2008, , Rule for Cultural Resources Cultural Properties and Historic Preservation, Review of Proposed State Undertakings that May Affect Registered Cultural Properties.

For preservation, rehabilitation or restoration projects which have the potential to affect registered historic structures, the *Secretary of the Interior's Standards for the Treatment of Historic Properties* shall be used. The standards provide guidance to help managers of historic properties achieve a state of utility, through repair and alteration, making possible an efficient contemporary use while preserving significant historical, architectural and cultural values. They also offer a comprehensive and flexible pathway from preliminary to final design.

The standards consider best practices from simple, routine maintenance issues like window facades and doors to major and minor additions to the proper treatment of interior spaces. Other critical concerns, like energy efficiency are also addressed. But more important, the standards provide a common language, or framework, by which each agency can satisfy their unique missions.

Effects of projects may involve modification, adaptation, alteration, new construction or demolition of registered historic structures. These projects will reference the *Secretary of the Interior's Standards for the Treatment of Historic Properties* as applicable within the parameters defined by NMAC 4-10-7-12 and NMAC 4-10-7-13.

Funding provided by PSFA for projects is required by statute to be applied to improve the quality of the facility to support the educational mission of the facility to adequacy. The parameters of these improvements are defined within PSFA Adequacy Standards. The school district has the responsibility for funding the historic preservation, rehabilitation or restoration of historic structures. PSFA funded improvements can coincide with the objective of historic preservation, rehabilitation or restoration of historic structures. Challenges may exists between the objectives of the PSFA funded improvements and the preservation standards. Example areas of challenges include (but are not limited to) architectural modifications to meet the educational activities, modifications to meet energy objectives, or modifications to provide high quality environment. The school district will consult with the SHPO and PSFA to identify options for achieving both the PSFA funded objectives and the preservation standards.

Standards for Preservation, Rehabilitation or Restoration:

1. Weather-related deterioration shall be prevented and measures to preserve the existing material shall be applied.
2. Deteriorated architectural features shall be repaired rather than replaced, wherever possible. In the event that replacement is necessary, the new material shall match the material being replaced in composition, design, color, texture, and other visual qualities. Repair or replacement of missing architectural features shall be based on accurate duplications of features, substantiated by historical, physical or pictorial evidence.
3. Missing elements shall be replaced in the exact form in which they appeared at the period of time represented, provided photographic or documented information is available, using like materials and methods or a substitute authorized by the state historic preservation officer.
4. Structural stability shall be maintained or re-established without essentially changing the existing form.

5. The surface cleaning of structures shall be undertaken only when necessary, and then only with extreme caution. Sandblasting and other cleaning methods that will damage the historic building materials shall not be undertaken.
6. Every reasonable effort shall be made to provide a use for a property that requires minimal alteration of the building, structure or site and its environment or, if this is not feasible, to use a property for its originally intended purpose.

Standards for Modification, Adaptation or Alteration:

1. Prior to and during the undertaking of any alteration, the areas to be affected will be recorded in all phases by photography and written description
2. The distinguishing original qualities or character of a building, structure, or site and its environment will not be destroyed. The removal or alteration of any historic material or distinctive architectural feature will be avoided when possible. Any historic feature that is removed will be recorded and, if possible, stored for future study or reuse.
3. All buildings, structures and sites shall be recognized as products of their own time. Alterations that have no historical basis and that seek to create a false sense of the historical development of a structure are discouraged.
4. Changes that may have taken place in the course of time are evidence of the history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right. Such significance must be recognized and respected.
5. Distinctive stylistic features or examples of skilled craftsmanship that characterize a building, structure or site must be treated with sensitivity.
6. Contemporary alterations or additions may be permissible if they do not destroy significant historical, architectural or cultural material. They shall be compatible in size, scale, color and material; or in rare cases may sympathetically contrast with the older work. It is desirable that contemporary additions and alterations express their own time and not copy the details nor style of the historic property.
7. Whenever possible, alterations or additions will be accomplished so that if removed in the future, the integrity of the original structure is essentially unchanged.
8. Changes necessary to conform to state codes will be incorporated, if required by a building inspector. The International Building Code, adopted by the state of New Mexico, provides for variances from code standards for historic structures. Such changes shall be made in a manner that alters the existing appearance of the structure as little as possible and otherwise conforms to standards of the Cultural Properties Review Committee.

Standards for New Construction or Demolition

1. Completely new construction for which neither documentation nor precedent exists must be expressive of its own time. Such construction, whether it be a discreet expansion of a historic building or a separate but closely related structure, shall be harmonious with the existing building, but shall avoid literal reproduction of specific architectural details.
2. The new building must be located so that the integrity and clarity of the historic site or district is not compromised. The functional demands of automobile and pedestrian circulation, the visibility required for control and protection of the site, and the preservation of natural terrain and vegetation, must be solved in such a way that the values of the site are not diminished.
3. Total reconstruction or relocation will not be attempted except when, in the view of the State Historic Preservation Officer, such undesirable procedures are the only means of preserving some of the values of extremely rare sites.

Criteria Underlying a Project's Listing on the State Register

When evaluating specific planning and design propositions, the school district and SHPO must determine if the proposition specifically affects the historical property in a manner that impacts the qualities of the property underlying its merit for being listed on the Register. The criteria applied to evaluate properties that are listed include:

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and

- (a) That are associated with events that have made a significant contribution to the broad patterns of our history; or
- (b) That are associated with the lives of persons significant in our past; or
- (c) 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
- (d) That has yielded, or may be likely to yield, information important in prehistory or history.

See 36 CFR § 60.4 —National Register of Historic Places § 60.4 Criteria for evaluation

The flowchart outlines the SHPO Review Process for PSFA Projects, starting from the PSFA Standard Contract and branching into various review paths based on project characteristics.

Initial Review (A.1 - A.3):

- A.1:** Include Historic Preservation in PSFA Standard Contract.
- A.2:** Tribal Lands?
 - Yes:** Official THPO? (A.2)
 - Yes:** Follow Process with THPO similar to SHPO.
 - No:** Follow Process with SHPO.
 - No:** Request SHPO determine if project encompasses Historic site, + inquire on GRANT opportunities; SHPO respond in 30 days (A.3).
- A.3:** Historic Properties Exist?
 - Yes +:** Received Federal Funds for Facility? (A.4)
 - Yes:** Follow Process per CFR Section 106.
 - No:** Municipal or Historic District? (A.5)
 - Yes:** Coordinate Requirements and Procedures.
 - No:** Follow Standard PSFA Process.
 - No:** Follow Standard PSFA Process.

Design and Review Process (B.1 - D.9):

- B.1:** Consult SHPO. Invite SHPO to meeting.
- M.1:** FMP Determine Reuse, Document Determination.
- M.2:** Present to School Board.
- M.2:** Disposal/Demolish.
- M.2:** SB approves FMP Disposal/Demolish.
- M.3:** PED Approval (for Active Schools).
- M.2:** Remodel/Renovates.
- M.2:** SB approves FMP Renovate/Remodel.
- D.1:** Program Statement RASC Requirements.
- D.2:** Consult SHPO. Invite SHPO to Meeting.
- D.2:** Application of HP Design Standards.
- D.4:** Submit Design to SHPO.
- D.4:** SHPO determine adverse effects, consult on options.
- D.3:** Schematic Design RASC.
- D.5:** Application of HP Design Standards.
- D.5:** Consult SHPO.
- D.5:** Design Development RASC.
- R.1:** SHPO Notified.
- D.9:** SHPO Notified.

Public Hearing and Decision (R.1 - R.5):

- R.1:** Proceed with School Board approved plan.
- R.1:** SHPO respond in 30 days - Adverse Effect.
- R.2:** School District advertise Public Hearing 30 days in advance. Invite SHPO, Annotate School Board Approval.
- R.2:** SHPO may suggest alternatives.
- R.2:** School District Hold Public Hearing. Maintain Record of Alternatives. Keep record open for 15 days.
- R.3:** School District determine Alternatives Prudent/Feasible. Provide written record of determination. A/E certify. Notify SHPO.
- R.3:** Incorporate Alternatives w/ SHPO.
- R.3:** Alternatives Prudent and Feasible?
 - Yes:** Incorporate Alternatives w/ SHPO.
 - No:** SHPO concur/dissent in 45 days in writing.
- R.4:** Proceed with School Board approved plan. Follow Statutory Disposal Process.
- R.4:** Conduct Additional Public Meeting - Alternatives?
- R.5:** Dissent Resolution.
- R.5:** CPRC Appeal in regularly scheduled public meeting.

Dissent Resolution (R.5 - R.6):

- R.5:** Incorporate Alternatives w/ SHPO.
- R.5:** + SHPO. Accept CPRC? Alternatives Available?
 - Yes:** Incorporate SHPO Guidance.
 - No:** SHPO may file injunction.
- R.6:** Proceed with School Board Approved Plan.
- R.6:** Court Adjudication.
- R.6:** + SHPO. Incorporate SHPO Guidance.

Final Steps (D.6 - D.7):

- D.6:** CD/Bid Doc RASC.
- D.7:** Proceed to Construction.

Procedures

The following steps define specific procedures for currently listed properties that must be followed for Master Plan or design services to meet the requirements of the New Mexico Public School Facilities Authority.

(A.1) Include Historic Preservation in Facility Master Plan or Design Projects for Projects that use Historic Properties.

Services contracted with the participation of PSFA shall include provisions for addressing historical properties. The contract language shall require conformance with the Federal, State and Local Laws and Regulations governing the preservation, rehabilitation, restoration, and reconstruction of historic buildings. When a currently listed historic or cultural property will be impacted by the planning and design services included in a Master Plan, the contract will require that a Historic Preservation professional - one with experience working on historic buildings - be included on the project team and that the school district coordinate and consult with the New Mexico State Historic Preservation Division.

Qualifications for Historic Preservation professional: a degree in architecture, history, anthropology, or historic preservation; license as applicable (architecture/engineering); at least one year of graduate study in architectural preservation, American architectural history, or preservation planning, and at least one year of full-time professional experience on preservation and restoration projects, or at least two years of full-time professional experience on preservation and restoration projects, which must include detailed investigations of historic structures, preparation of historic structure research projects, and preparation of construction documents for preservation projects.

See [16 U.S.C. 470h-4(a) — Each Federal agency is to protect historic resources through professionalism of employees and contractors]

(A.2) Tribal Historic Properties. Determine if the project encompasses Tribal Lands and if the Tribal Lands have a Tribal Historic Preservation Officer (THPO). Tribal lands may have a designated Tribal Historic Preservation Officer (THPO) who may have some or all of the designated authority and responsibility of the SHPO. The school district will coordinate with the Tribal Historic Preservation Officer. All references to SHPO in this document will also be construed to apply to the THPO as appropriate with respect to the THPO authority and responsibilities defined by the Tribal government under the NHPA.

The Tribal government may have established a program and regulations for Historic Preservation under the authority of the NHPA. The school district will follow the specific requirements of any Tribal Historic Properties regulations. Where Tribal regulations and policies do not override this guide, the school district will also comply with the procedures and policies defined in this PSFA Historic Properties Procedural Policy Guide.

See National Historic Preservation Act of 1966, as amended through 2006 - Section 101 (d) [16 U.S.C. 470a (d) — Establish program and regulations to assist Indian tribes] For Federal Funded sites, see 36 CFR § 800.2 Participants in the Section 106 (A) Tribal historic preservation officer.

(A.3) Request SHPO determination about whether the project encompasses Historic sites. The school district shall, at an early stage in the development of a Project that constitutes a proposal to carry out a program or project that may use land listed from a significant prehistoric or historic site, request from the SHPO and NMHPD verification that the program or project will use a significant prehistoric or historic site. As part of the request, the school district shall submit to the SHPO an appropriately substantial written and graphic description of the proposed program or project and a map showing the area of impact of the proposed program or project. This submittal shall conform to the submittal requirements set forth in 4.10.7.9 Review Procedures and 4.10.12.11 Prudent and Feasible Alternatives

The school district shall also consult the National Register of Historic Places as well as the New Mexico State Registers of Cultural Properties. A list of registered properties is available on HPD's website:

<http://nmhistoricpreservation.org/program/registers.html> and a copy may be requested from HPD. HPD also maintains records on previous architectural (and archaeological surveys) and copies of Historic Cultural Property Inventory (HCPI) forms may be made available by request to HPD.

The SHPO will respond within 15 working days with a determination and a list of any prehistoric or historic sites that will be used, including sites entered in the State Register of Cultural Properties or National Register of Historic Places. In the event that the State Historic Preservation Officer fails to respond within 30 working days, the requirement of law may be deemed by the School District to be satisfied.

Under State law, only projects listed in the State Register or Federal Register are covered by these requirements.

See Title 4 Cultural Resources Chapter 10 Cultural Properties and Historic Preservation Part 7 Review of Proposed State Undertakings that may Affect Registered Cultural Properties 4.10.7.9 Review Procedures.

See Title 4 Cultural Resources Chapter 10 Cultural Properties and Historic Preservation Part 12 Implementation of the Prehistoric and Historic Sites Preservation Act 4.10.12.11 Prudent and Feasible Alternatives:

See Section 106 [16 U.S.C. 470f — Advisory Council on Historic

(A.3a) Inquire on Grant opportunities. The School District shall submit a written inquiry to the SHPO asking about any possible Historic Preservation grants that may be available for Historic Preservation on facilities in the proposed Master Plan or Design Project. The School District shall include written recommendations in their reports that explain proposed actions related to any grant opportunities.

(A.4) Historic Preservation Act Section 106 Requirements: School District that have or are receiving Federal Funds for School Facilities. When Federal assistance is provided for educational facilities that are listed or are eligible for listing in the National Register of Historic Places and are included the planning or design project, the project will be required to comply with the Federal Section 106 requirements. In such a case, the SHPO and Advisory Council on Historic Preservation must be notified and afforded a reasonable opportunity to comment with regard to such undertakings. The notification and opportunity must be provided early in the process, prior to the time when actions restrict the consideration of alternatives to avoid, minimize or mitigate the adverse effects on the historic property.

See NHPA Section 106 [16 U.S.C. 470f — Advisory Council on Historic Preservation, comment on Federal undertakings]

See Title 36 CFR 800.9 Council review of Section 106 compliance. (c) Timing

(A.5) Historic Properties and Historic Districts in local municipalities. If the project includes a historic property in a community or property located within a Historic District that have their own ordinance,, the school district shall follow the additional requirements of that community's ordinances. The Authority Having Jurisdiction (AHJ) may have responsibility to review and approve or deny all applications for new construction, exterior alterations or demolition of structures in accordance with the standards and procedures set forth in the local community statutes. Appeals of final actions of the Authority Having Jurisdiction may be conducted in hearings by local boards.

(B.1) Include the SHPO early in the Project Process. For projects that include historic properties, or could have an adverse effect therein, the school district must afford the SHPO an opportunity at an early stage in the project to engage in and consult on the planning and/or design process.

As part of the notification to the SHPO of the project, the school district will provide information on properties encompassed in the project, including:

- a) State Register #, and/or
- b) Historic Cultural Property Inventory (HCPI) Form, and/or,
- c) Graphic Documentation such as:
 - i. Map locating the building(s)
 - ii. Site plan showing building in relationship to other campus buildings
 - iii. Oblique photographs of two sides of the buildings and/or campus

For Master Plan project activities, the SHPO should be invited to meet with the steering committee and/or key decision makers and stakeholders in the planning process. In the meeting the SHPO shall have the opportunity to explain key concerns, objectives, and general recommendations regarding the project to the planning representatives. During this meeting the planning representatives can present to the SHPO key mission, objectives, requirements and constraints of the project. The planning representatives will also be able to clarify with the SHPO the appropriate procedures, documentation, criteria, and standards required in the Historic Preservation process.

For the Master Plan and Design project, the SHPO shall be invited with appropriate lead time to community meetings. Invitations must be issued at least 15 days prior to the meeting. The meeting format must allow for open dialog between the participants. Record meeting minutes must be maintained of the meeting, and kept open for 15 days after the meeting to allow inclusion of additional comment by the SHPO.

For any design project that includes a historic property, the first step will be for the School District to furnish information regarding the project to the State Historic Preservation Officer, as defined in *4.10.7.9 Review Procedures* and *4.10.12.11 Prudent and Feasible Alternatives*. This step must occur even before a scope of work (scope of work is defined when the award is made) is defined, a request for proposals is issued, or the architects' or engineers' plans are authorized. In the case of land modifications, the same initial step is required, as soon as the agency head learns of or is informed of a proposal.

Prior to and during the undertaking of any alteration, the areas to be affected must be recorded in all phases by photography and written description as defined in *4.10.4.11 General Standards for Modification, Adaptation or Alteration for Structures*.

See *Title 4 Cultural Resources, Chapter 10 Cultural Properties and Historic Preservation, Part 12 Implementation of The Prehistoric and Historic Sites, Preservation Act, 4.10.12.11 Prudent and Feasible Alternatives*.

See *36 CFR § 60.14 Changes and revisions to properties listed in the National Register*.

See *36 CFR Subpart B-The section 106 Process § 800.3 Initiation of the section 106 process*.

Procedures Unique to Master Plan Projects

(M.1) Master Plan Project Determination. The Master Plan will include recommendations for facilities and systems that are deficient and in need of repair or replacement in order to create adequate educational settings for the School District. The recommendations may include expansion, renovation and remodeling, or replacement of the existing facilities or new construction. The project may propose disposal or demolition of the existing structures.

(M.2) School Board Project Approval. The completed Facilities Master Plan is included on the agenda of the School Board meeting and presented to the Board Members. Based on the content of the Facilities Master Plan the School Board will vote to approve the FMP or request further recommendations for their consideration.

(M.3) New Mexico Public Education Department (PED) Approval of Determination to Discontinue use of Active Schools. Any change to the organizational pattern of a school district or charter school, including the establishment or closing of a school, must have the approval of the New Mexico Public Education Department (PED) Secretary's prior to implementation. Requests for such a change must be submitted using the PED grade level organization and Establishing/Closing School waiver request form. The waiver request shall outline the expected educational benefits to making the proposed organizational change.

See *NMAC Title 6 Primary and Secondary Education Chapter 29 Standards for Excellence Part 1 General Provisions 6.29.1.9 Procedural Requirements F. Organization of Grade Levels and Establishing/Closing Schools.*

Conclusion of PSFA-defined Master Plan Project Process and Commencement of Process for Resolving Adverse Effects. With approval of the School Board and approval of PED when required, the normal PSFA-defined project process is concluded. At this point, when the project includes Historic Properties, however, additional steps are required including submittal to the SHPO and resolution of adverse effects.

Procedures for Design Projects

(D.1) Program Statement RASC Requirements Coordination with the SHPO. At the start of a design project, the school district must submit the Program Statement for projects in PSFA's *Construction Information Management System (CIMS)* for *Request for Approval of School Construction (RASC)*. For projects that include historical properties, upon making this RASC submittal the school district will also submit the Program Statement to the SHPO. This additional submittal will notify the SHPO of the project. The submittal will include information of the intent of the project scope. Projects in which the initial inquiry to the SHPO results in a determination the proposed project will possibly have an effect (adverse or otherwise) on a historic property, must also include in the Program Statement a citation of the historic registration (state or national), the key evaluation criteria characteristics of the property (as defined in 4.10.18.11(b).1 and the general effect that the project will have on the historic structure.,

(D.2) Project Committee consults with SHPO. The school district shall coordinate with the SHPO by inviting the SHPO to meet with school district representatives. The meeting shall allow the SHPO to discuss key concerns, objectives, and general recommendations for the project. The SHPO may discuss application of the *Secretary of Interiors Standards for the Treatment of Historic Properties* to the project. The meeting shall afford the school district representatives the opportunity to present the projects key mission, objectives, requirements and constraints, and to as clarify with the SHPO the appropriate procedures, documentation, criteria, and standards that are required for the Historic Preservation process.

The general intent of the Schematic Design process is for the school district to work collaboratively with the SHPO to identify the appropriate design solutions that satisfy the requirements of the Program Statement, while producing work that minimizes adverse effects on the historic building. The school district shall consult with the SHPO/THPO and other consulting parties, including Tribal Organization when impacted, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties.

See 36 CFR § 800.6 Resolution of adverse effects, (a) Continue consultation.

(D.3) Schematic Design RASC. During Schematic Design, an architect commonly develops study drawings, documents, or other media that illustrate the concepts of the design and include spatial relationships, scale, and form for the owner to review. Schematic Design is also the research phase of the project. The Schematic Design identifies what general areas and aspects of a structure will be modified or affected by the project, and identifies the general architectural design vocabulary that will be employed.

(D.4) Notify SHPO of RASC Schematic Design. The school district shall submit the Schematic Design to the SHPO when the design is uploaded into the in PSFA's *Construction Information Management System (CIMS)* for *Request for Approval of School Construction (RASC)*. The submittal to the SHPO shall include the appropriate documentation as required in 4.10.7.9 Review Procedures and 4.10.12.11 Prudent and Feasible Alternatives.

The SHPO has 15 days to respond with a determination of adverse effects. Any determination of adverse effects may require one of three alternative actions. If the findings are that no adverse effects result from the design, the project may continue with the design as submitted. If the findings determine that there are adverse effects that can be addressed through further design refinement, the school district shall review application of the *Secretary of Interiors Standards for the Treatment of Historic Properties* and identify alternative solutions that can resolve adverse effects. If the finding requires reconsideration of general design decisions, then the school district will need to revisit schematic design solution alternatives developed in consultation with the SHPO to avoid or minimize adverse effects.

(D.5) Design Development RASC. After approval of the Schematic Design, the project will proceed into Design Development. Design development (DD) services use the initial design documents from the schematic phase and develop them further. This phase identifies specific building code requirements, adequacy requirements, building elements and features, architectural details, material types and the types of windows and doors. It also lays out structural, mechanical, electrical, and plumbing systems. The intent of consultation with the SHPO after completion of the Schematic Design Phase and Design Development Phase is to resolve any adverse effects with the SHPO before execution of the Construction Document/Bid Document Phase which concludes the standard design process. The results of the collaboration will be for the school district to employ specific design solutions that meet the functional requirements, while producing work that minimizes adverse effects on the historic building. The school district shall consult with the SHPO/THPO and other consulting parties, including Tribal Organization when impacted, to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties.

See Title 4 Cultural Resource, Chapter 10 Cultural Properties and Historic Preservation Part 7 Review of Proposed State Undertakings that may Affect Registered Cultural Properties, 4.10.7.9 Review Procedures.

See Title 4 Cultural Resources Chapter 10 Cultural Properties and Historic Preservation Part 12 Implementation of the Prehistoric and Historic Sites Preservation Act 4.10.12.11 Prudent and Feasible Alternatives

See 36 CFR § 800.6 Resolution of adverse effects, (a) Continue consultation.

(See R.1) Notify SHPO of Design Development RASC. The school district shall submit the Design Development package to the SHPO when the design is uploaded into the in PSFA's Construction Information Management System (CIMS) for Request for Approval of School Construction (RASC). The submittal to the SHPO shall include the appropriate documentation as required in *4.10.7.9 Review Procedures* and *4.10.12.11 Prudent and Feasible Alternatives*. The intent of consultation with the SHPO during the design process is to resolve any adverse effects with the SHPO before conclusion of the standard design process. All issues that have not been resolved up to the end of the Design Development Phase must be resolved through all public hearing and appeals processes before the project proceeds through the Construction Document Phase and is submitted for Bid RASC approval.

See Title 4 Cultural Resource, Chapter 10 Cultural Properties and Historic Preservation Part 7 Review of Proposed State Undertakings that may Affect Registered Cultural Properties, 4.10.7.9 Review Procedures.

See Title 4 Cultural Resources Chapter 10 Cultural Properties and Historic Preservation Part 12 Implementation of the Prehistoric and Historic Sites Preservation Act 4.10.12.11 Prudent and Feasible Alternatives

See 36 CFR § 800.6 Resolution of adverse effects.

(D.6) Construction Documents/Bid Documents RASC. The Construction/Bid Documents constitute a detailed set of drawings and specifications produced by all disciplines coordinated into one coherent set of documents that becomes the basis for a construction contract. The Construction/Bid Documents must be detailed and clear enough to be biddable, readable, and buildable, and aim to eliminate any unreasonable interpretations. The Construction/Bid Documents should include all levels of drawings from site planning to construction details. The information contained in the Construction/Bid Documents must be comprehensive to allow the contractor to price and build the project.

The project may proceed through the construction document phase upon either concurrence of the SHPO on resolution of Adverse Effects or conclusion of all public hearings and appeals prescribed by statutes.

(D.7) Proceed to Construction. Upon School Board approval execute a contract for construction.

Addressing Adverse Effects

(R.1) SHPO Notification. The School District will submit the approved project to the SHPO. This submittal must follow requirements prescribed in *4.10.7.9 Review Procedures*. The SHPO will respond within 15 working days, 1) stating that no effect on a registered cultural property will occur, or 2) confirming that an effect on a registered cultural property will occur and requesting further information. Per the PSFA Historic Properties Procedural Policy, the SHPO will have been given prior opportunity to participate in planning. In the event that the SHPO fails to respond within 30 working days, the requirement of law may be deemed by the School District to be satisfied.

As defined in *4.10.7.10 Determination* the School District and SHPO shall cooperatively make one of the following determinations in any case in which a registered cultural property will be affected by a land or structure modification. The School District will bear the burden of proving that a determination of “A” as defined below is neither prudent nor feasible.

A. The School District and SHPO may determine that a property or site shall be preserved, protected, rehabilitated, restored or avoided. Such determination shall be confirmed in writing by both parties. The School District will provide detailed specifications for such preservation, protection, rehabilitation, restoration or avoidance to the SHPO for the SHPO’s concurrence. This information may be contained in the Construction/Bid Documents, or in Master Plan documentation.

B. The School District and SHPO may determine that feasible preservation of any structure or site will require its modification, adaptation or alteration to meet a contemporary use without extraordinary budget impacts. Such determination shall be confirmed in writing by both parties. The School District will provide detailed specifications for such modification, adaptation, or alteration to the SHPO for the SHPO’s concurrence at the earliest planning stage and periodically throughout the project. This information may be contained in the Construction/Bid Documents, or in the Master Plan documentation.

C. The School District and SHPO may determine that preservation or retention of any structure or site will deprive the School District of a reasonable use of the property and incur unreasonable expense. On the basis of such a determination, the School District and SHPO may concur that the property shall be demolished or moved. A demolition or removal determination will be confirmed in writing by both parties. In this type of case, the SHPO will request that the property or site be documented with Historic Cultural Properties Inventory (HCPI) forms, as-built drawings, maps and photographs or other documentation consistent with contemporary professional standards, and will provide detailed specifications for such documentation.

(R.2) Public Hearing. If the planning or design process does not result in agreement between the School District and the SHPO on prudent and feasible alternatives, then per NMAC 4.10.12.11 (B) the School District must hold a public hearing. The meeting may be one of the regularly scheduled meetings conducted by the School District. A hearing is required if the School Board determination is to dispose of or demolish an historic facility. The School District must advertise the public hearing to solicit proposed alternatives. The public hearing must be advertised in newspapers of local and statewide circulation at least 30 days in advance of the hearing. The School District must provide the SHPO written timely notice of the meeting. The meeting shall allow for oral and written testimony of interested persons. The SHPO may propose alternatives at the meeting. The School District shall prepare an official record document of the alternatives proposed at the hearing. This official record must be written, reviewable, and substantial, and must be held open for 15 days after the hearing, so that interested persons have the opportunity to include additional comments.

(R.3) Determination of Prudent/Feasible Alternatives The School District must write a conclusion of the imprudence or infeasibility of alternatives, including the no-build (no construction) alternative, identified by itself or by the SHPO per NMAC 4.10.12.11 (D). Arguments based on cost and technical feasibility must be supported by affidavit of a qualified architect or engineer. It shall not be deemed sufficient for the purposes of this analysis to reject an alternative as imprudent or infeasible because it would affect other significant prehistoric or historic sites, or would affect the same sites in a different manner.

It shall be the affirmative responsibility of the School District either to determine that there is no prudent and feasible alternative to a proposed program or project or to select the alternative to a proposed program or project that causes the least harm to any significant prehistoric or historic site or sites. The School District shall issue this determination in the form of a written record of decision released to all interested parties, including direct notice to the SHPO and the Historic Preservation Division.

(R.4) SHPO Concurrence/Dissent with School District Determination. . It shall be the affirmative responsibility of the SHPO to respond to the School District's record of decision and to concur with or to dissent from its conclusions within 45 days of receipt of the record. The SHPO shall state in writing his finding that there is or is not a prudent and feasible alternative to the proposed program or project, or that the alternative causing the least harm to any significant prehistoric or historic site or sites has or has not been selected, and that all possible planning to minimize harm to a significant prehistoric or historic site or sites has or has not been carried out as further documented in 4.10.12.12 NMAC.

Disposal or Demolition. For structures that are designated for disposal or demolition, the School District must follow the statutory disposal process for schools in the State of New Mexico.

Dissent Resolution. If the SHPO concurs with the School District, the School District may proceed with the approved project. If the SHPO dissents with the School District's determinations, then the process will enter the Dissent Resolution phase.

(R.5) CPRC Appeal. When a School District does not concur with or accept the SHPO's dissent, as defined in 4.10.7.10 NMAC, the head of such School District may appeal to the Cultural Properties Review Committee (CPRC) by providing a statement of the case in appropriate detail. Such an appeal shall be made not less than 30 days before a scheduled committee meeting. The committee shall hear the case in a regular public meeting and shall have authority (1) to request further information, (2) to accept the determination of the School District or of the SHPO, or (3) to specify another solution consistent with its established and written standards. Appeal to the cultural properties review committee shall be the final administrative appeal in any case.

(R.6) Injunction. If the CPRC does not find for the School District, and if the School District determines that it will execute the School Board approved decision in opposition to the SHPO recommendations, then the SHPO has the legal authority to file an injunction in court. If the SHPO files an injunction, then the courts will adjudicate the issue and find for either the School District or the SHPO.

PSFA intends through application of the process prescribed in this guide to avoid dissent situations necessitating court intervention. The process prescribed by PSFA promotes early and continuous involvement of the SHPO in School District planning and design efforts on historic properties. This process should foster agreements between the School District and SHPO that avoid adverse effects to the extent feasible and prudent for each project.

Appendix A

Checklist of Materials

For

HPD Consultation if Property is Historically Listed

1. Name of school district and school, school building, or school property where “use” will take place.
2. Street map – Clearly mark on the street map the location of the land or building where construction or renovation will take place. Also include the street address.
3. Description of the proposed project – What are the dimensions of the area? How will the “use” affect existing structures or the surface of the ground?
4. Map of School Grounds – indicate where the “use” will take place
5. Preliminary drawings or designs.
6. Current photographs – photographs of structures or buildings and site to be affected by the project.
7. Description of previous modification or construction – How has the ground surface been affected by previous construction? Has a building or structure been modified? Or, is it in its original form?
8. Archaeological sites or other cultural resources (i.e. historic buildings) – Identify any previously known cultural resources located where the “use” will take place. Also assess the potential for any cultural resource to exist there. Are artifacts on the ground? Do you think a school building may be historically significant?
9. Assessment of whether the project may damage or destroy existing cultural resources
10. Land Ownership – list who owns the land
11. Funding Source
12. Federal involvement in the “use” – Is a federal permit or authorization needed for the project? Or is the federal government directly or indirectly involved? Could the project be accomplished without some funding from the government?
13. Consultation with Native Americans, and efforts to identify other consulting parties- Have you determined if your project will affect Native Americans or other interested groups? How will it affect them? Note: Consultation is recommended but not required by state law at this time.

Appendix B

Sample Letter for Initiating Consultation with HFD

Date

State Historic Preservation Officer
Department of Cultural Affairs
Historic Preservation Division
407 Galisteo Street, Suite 236
Santa Fe, New Mexico 87501-2834

Re: School Name, Town, County

Dear Dr. Pappas,

ABC Elementary School of the XYZ School I District is planning to move playground equipment from its current place to a location one hundred feet west (see attached map). This project will involve removing the concrete holding the equipment in place, digging holes three feet deep to remove the equipment, and leveling off the exposed surface after the removal of the equipment. Holes will also need to be dug to a depth of three feet at the new location in order to secure the equipment, after which cement will be poured to finally fix the equipment in the ground. When ABC Elementary was originally constructed, approximately one foot of fill was put over the areas in question to level out the ground surface.

The school district owns this property and the source of funding for this project is from city bonds.

There is no record of any cultural resources existing on this property and no artifacts are present on the ground's surface. The XYZ School District, therefore, believes that the project will not adversely affect any cultural resources and asks for concurrence from the New Mexico Historic Preservation Division.

Please contact me at (505) 555-5555 to discuss the project or if you require any additional information.

Sincerely,

Superintendent's Signature
Superintendent Name

Attachments: street map, map of school grounds

[NOTE TO READER: The purpose of consultation with the Historic Preservation Division is to gain concurrence that the proposed project will not adversely affect any cultural resources present on state land (.e. land owned, controlled or operated by a school district).

Sample Map to Include with Consultation Letter to HPD

