TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule
LSA Document #10-42(F)

DIGEST

Adds 312 IAC 20-4 to govern the alteration, demolition, or removal of historic sites and historic structures by a project funded, in whole or in part, by the state of Indiana. Effective 30 days after filing with the Publisher.

312 IAC 20-4

SECTION 1. 312 IAC 20-4 IS ADDED TO READ AS FOLLOWS:

Rule 4. Historic Sites and Historic Structures

312 IAC 20-4-1 Application of rule

Authority: IC 14-10-2-4; IC 14-21-1-31
Affected: IC 14-9; IC 14-21-1

Sec. 1. Except as provided in section 2 of this rule, this rule governs an action to alter, demolish, or remove by a project funded by the state, in whole or in part, either of the following:
(1) A historic site or historic structure owned by the state.
(2) A historic site or historic structure listed on the National Register or Indiana register.

(Natural Resources Commission; 312 IAC 20-4-1; filed Dec 10, 2010, 10:40 a.m.: 20110105-IR-312100042FRA)

312 IAC 20-4-2 Exception for qualified state educational institution property

Authority: IC 14-10-2-4; IC 14-21-1-31
Affected: IC 14-9; IC 14-21-1-18

Sec. 2. Real property that is owned by a state educational institution, if the property is governed by IC 14-21-1-18(c), is excepted from this rule.

(Natural Resources Commission; 312 IAC 20-4-2; filed Dec 10, 2010, 10:40 a.m.: 20110105-IR-312100042FRA)

312 IAC 20-4-3 Applicability of definitions

Authority: IC 14-10-2-4; IC 14-21-1-31
Affected: IC 14-9; IC 14-21-1

Sec. 3. (a) Except as otherwise specified, the definitions in IC 14 and 312 IAC 1 apply throughout this rule.

(b) In addition to the definitions referenced in subsection (a), the definitions in sections 4 through 6 of this rule apply throughout this rule.

(Natural Resources Commission; 312 IAC 20-4-3; filed Dec 10, 2010, 10:40 a.m.: 20110105-IR-312100042FRA)

312 IAC 20-4-4 "Adverse impact" defined

Authority: IC 14-10-2-4; IC 14-21-1-31
Affected: IC 14-9; IC 14-21-1

Sec. 4. "Adverse impact" means an action that results in changes to the exterior or interior appearance or the setting of a historic site or historic structure that are inconsistent with any of the following:

(1) 36 CFR Part 68 (July 1, 2009) and "The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings" (U.S. Department of the Interior, National Park Service, Washington, D.C., 1995).

(2) "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" (U.S. Department of the Interior, National Park Service, Washington, D.C., 1990).

(3) "The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes" (U.S. Department of the Interior, National Park Service, Washington, D.C., 1996).

(4) "The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" at 48 FR 44716.

(5) 312 IAC 21.

(Natural Resources Commission; 312 IAC 20-4-4; filed Dec 10, 2010, 10:40 a.m.: 20110105-IR-312100042FRA)

312 IAC 20-4-5 "District" defined

Authority: IC 14-10-2-4; IC 14-21-1-31
Affected: IC 14-9; IC 14-21-1

Sec. 5. "District" means a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united historically or aesthetically by plan or physical development as determined under the National Register Bulletin "How to Apply the National Register Criteria for Evaluation" (NRB 15, as revised for Internet, 2002).

(Natural Resources Commission; 312 IAC 20-4-5; filed Dec 10, 2010, 10:40 a.m.: 20110105-IR-312100042FRA)

312 IAC 20-4-6 "Setting" defined

Authority: IC 14-10-2-4; IC 14-21-1-31
Affected: IC 14-9; IC 14-21-1

Sec. 6. "Setting" means the physical environment of a historic site or historic structure that is associated with it historically or by design.

(Natural Resources Commission; 312 IAC 20-4-6; filed Dec 10, 2010, 10:40 a.m.: 20110105-IR-312100042FRA)

312 IAC 20-4-7 Evaluation of a historic site

Authority: IC 14-10-2-4; IC 14-21-1-25; IC 14-21-1-31
Affected: IC 14-9; IC 14-21-1

Sec. 7. In evaluating whether a site is a historic site, the division shall take into account what is important to the:

(1) general;
(2) archaeological;
(3) agricultural;
(4) economic;
(5) social;
(6) political;
(7) architectural;
(8) industrial; or
(9) cultural;

history of Indiana. In evaluating impacts on a historic site, the division shall also consider adjacent property that is necessary for the preservation or restoration of the site. To assist in an evaluation,

reference shall be made to the definitions of a "site" or a "district" set forth by the National Park Service (36 CFR 60.3 (July 1, 2009)) and to the definitions for "historic designed landscape" and "historic vernacular landscape" in "The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes" (U.S. Department of the Interior, National Park Service, Washington, D.C., 1996, page five (5)).

(Natural Resources Commission; 312 IAC 20-4-7; filed Dec 10, 2010, 10:40 a.m.: 20110105-IR-312100042FRA)

312 IAC 20-4-8 Evaluation of a historic structure

Authority: IC 14-10-2-4; IC 14-21-1-31
Affected: IC 14-9; IC 14-21-1

Sec. 8. In evaluating whether a structure is a historic structure, the division shall take into account what is important to the:
(1) general;
(2) archaeological;
(3) agricultural;
(4) economic;
(5) social;
(6) political;
(7) architectural;
(8) industrial; or
(9) cultural;
history of Indiana. In evaluating impacts on a historic structure, the division shall also consider adjacent property that is necessary for the preservation or restoration of the structure. To assist in an evaluation, reference shall be made to the definitions of a building, structure, or object set forth by the National Park Service at 36 CFR 60.3 (July 1, 2009).

(Natural Resources Commission; 312 IAC 20-4-8; filed Dec 10, 2010, 10:40 a.m.: 20110105-IR-312100042FRA)

312 IAC 20-4-9 Certificate of approval

Authority: IC 14-21-1-31
Affected: IC 14-9; IC 14-21-1-18

Sec. 9. (a) Except as provided in section 11 of this rule, a state agency may not alter, demolish, or remove any state-owned historic site or historic structure eligible for or listed in the National Register or Indiana register by a project funded, in whole or in part, by the state, unless the agency obtains in advance a certificate issued under IC 14-21-1-18 and this rule.

(b) Except as provided in section 11 of this rule, a state agency or other entity employing state funds may not alter, demolish, or remove any historic site or historic structure that is listed on the National Register or Indiana register and not owned by the state, unless the agency or entity obtains in advance a certificate of approval.

(c) A state agency or entity described in subsection (a) or (b) must file an application for a certificate with the division as set forth in this rule.

(Natural Resources Commission; 312 IAC 20-4-9; filed Dec 10, 2010, 10:40 a.m.: 20110105-IR-312100042FRA)

312 IAC 20-4-10 Application for certificate of approval

Authority: IC 14-10-2-4; IC 14-21-1-25; IC 14-21-1-31
Affected: IC 14-9; IC 14-21-1

Sec. 10. A state agency or other entity described in section 9 of this rule must complete an application

on a division form that includes the following information:
(1) A detailed description or scope of work of all:
(A) construction;
(B) demolition;
(C) landscaping;
(D) earthmoving;
(E) rehabilitation; and
(F) installation;
activities.
(2) A detailed explanation of how, and to what extent, land, buildings, structures, or objects, in or adjacent to the project area, could be physically altered or visually modified or obscured.
(3) A description of current and past land uses within the project area.
(4) A statement including the known or approximate dates of construction of buildings, structures (as defined in 36 CFR 60.3 (July 1, 2009)), and objects located within or adjacent to the project area.
(5) A statement identifying known archaeological sites in the project area.
(6) A statement including the known or approximate dates of constructions of all properties within historic districts that are situated within or adjacent to a project area.
(7) A statement as to whether any historic sites or historic structures could be altered, demolished, or removed as the result of the acquisition or construction of a new facility and a description of such sites or structures.
(8) A map identifying the location of the project.
(9) Recent photographs depicting any buildings, structures, objects, or districts (as defined in 36 CFR 60.3 (July 1, 2009)) that:
(A) may be at least fifty (50) years old; and
(B) could be impacted by the project in any way.
(10) A site plan for projects that will involve:
(A) new construction;
(B) additions to existing buildings;
(C) changes in rights-of-way; or
(D) earthmoving activities;
on a particular lot or lots.
(11) Copies of architectural or engineering plans or specifications, for projects involving an addition to, rehabilitation, or restoration of a historic building or structure (as defined in 36 CFR 60.3 (July 1, 2009)).
(12) If a historic site or historic structure would be altered, demolished, or removed as part of the project, an identification of any alternatives that were, or could reasonably be, considered that would have a lesser impact on the site or structure.
(13) In projects involving alterations, demolitions, or removals of a historic site or historic structure, a discussion of the advantages and disadvantages of alternatives investigated and the feasibility of each. If no alternatives appear to be feasible, an explanation must be provided as to why none are feasible.

(Natural Resources Commission; 312 IAC 20-4-10; filed Dec 10, 2010, 10:40 a.m.: 20110105-IR-312100042FRA)

312 IAC 20-4-11 Letters of clearance

Authority: IC 14-10-2-4; IC 14-21-1-31
Affected: IC 14-9; IC 14-21-1

Sec. 11. (a) The division director shall issue a letter of clearance, and exempt an applicant from obtaining a certificate of approval under section 9 of this rule, where the division director concludes, after reviewing an application, that there are no known state-owned historic sites or historic structures that are eligible for inclusion or listed on the National Register or Indiana register in the project area.

(b) The division director shall also issue a letter of clearance, and exempt an applicant from obtaining a certificate of approval under section 9 of this rule, where the division director concludes, after reviewing an application, that there are no nonstate-owned historic sites or structures listed on the National Register or Indiana register in the project area, if the project is funded, in whole or in part, by the state.

(c) The division director may issue a letter of clearance, and exempt an applicant from obtaining a certificate of approval under section 9 of this rule, where the division director concludes, after reviewing an application, that there will be no adverse impact on any known state-owned historic site or historic structure that is eligible for inclusion or listed on the National Register or Indiana register in the project area.

(d) The division director may also issue a letter of clearance, and exempt an applicant from obtaining a certificate of approval under section 9 of this rule, where the division director concludes, after reviewing an application, that there will be no adverse impact on any known historic site or historic structure that is not state-owned and is listed on the National Register or Indiana register, if the project is funded, in whole or in part, by the state.

(e) In determining whether there will be an adverse impact under subsection (c) or (d), the division director shall consider whether the changes proposed in an application meet the following:
(1) 36 CFR Part 68 (July 1, 2009) and "The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings" (U.S. Department of the Interior, National Park Service, Washington, D.C., 1995).
(2) "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings" (U.S. Department of the Interior, National Park Service, Washington, D.C., 1990).
(3) "The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for the Treatment of Cultural Landscapes" (U.S. Department of the Interior, National Park Service, Washington, D.C., 1996).
(4) "The Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation" at 48 FR 44716.
(5) 312 IAC 21.

(f) Activities that would have an adverse impact include the following:
(1) Removing all or part of a historic structure from its original location.
(2) Demolishing all or part of a historic site or a historic structure.
(3) Introducing new permanent elements not in keeping with the setting of a historic site or historic structure.
(4) Introducing new permanent exterior or interior features to a historic structure that are not in keeping with the features of the structure that contribute to its eligibility or listing in the National Register or Indiana register.
(5) Disturbing the soil of an archaeological site in a manner that does not conform to 312 IAC 21 and 312 IAC 22.
(6) Similar activities that the division director determines have an adverse impact.

(g) The division director shall provide notice by e-mail or U.S. mail of the decision to grant a letter of clearance to interested persons. Any member of the public may request to be placed on a list of interested persons maintained by the division. An interested person may, under 312 IAC 2-3, obtain a review by a designated member of the review board of the decision if the request for review is filed with the division within fifteen (15) days after the decision is issued. The designated member shall decide whether an application for a certificate of approval should be filed. If the member decides that an application should be filed, the division shall place the completed application on the agenda of the next meeting of the review board. If the member decides that an application for a certificate is not required, the letter of clearance is affirmed. A determination under this subsection is not effective until the later of the following:
(1) Fifteen (15) days after issuance of the determination.
(2) The day resulting from a notice given under 312 IAC 2-3-7(d).

(Natural Resources Commission; 312 IAC 20-4-11; filed Dec 10, 2010, 10:40 a.m.: 20110105-IR-312100042FRA)

312 IAC 20-4-12 Requesting additional information to complete applications for a certificate of approval by the review board

Authority: IC 14-10-2-4; IC 14-21-1-25; IC 14-21-1-31
Affected: IC 14-9; IC 14-21-1

Sec. 12. If the division director (or the review board under section 11(g) of this rule) determines that a certificate is required for a proposed activity, the division director may request additional information from the applicant on the project deemed appropriate to presenting a complete application for consideration by the review board.

(Natural Resources Commission; 312 IAC 20-4-12; filed Dec 10, 2010, 10:40 a.m.: 20110105-IR-312100042FRA)

312 IAC 20-4-13 Consideration by review board of applications for a certificate of approval

Authority: IC 14-10-2-4; IC 14-21-1-25; IC 14-21-1-31
Affected: IC 14-9; IC 14-21-1

Sec. 13. (a) If the division director determines that a certificate is required for a proposed activity, the director shall notify the applicant and other interested persons that the application would be placed on the agenda of the review board for action. An application must be complete at least forty (40) days before a scheduled meeting of the review board in order to qualify for placement on the agenda of the meeting. The division director shall send notice to the applicant and other interested persons at least ten (10) days before the meeting.

(b) The division shall prepare a staff comment on the project and its adverse impact on eligible or listed historic sites or historic structures. The comment may provide a recommendation on ways to remove or reduce the adverse impact to an acceptable level or to mitigate the adverse impact if removal or substantial reduction is not feasible. If removal or reduction of the adverse impact to an acceptable level or mitigation of the impact does not appear feasible, the division may recommend denial of the application.

(c) The review board shall provide a reasonable opportunity for the applicant and other interested persons to provide oral or written comments at the meeting with respect to an application. The review board may:
(1) act upon an application during the initial meeting when the application is considered; or
(2) defer action until a subsequent meeting.

(d) The review board shall consider the application of the agency, the staff comment, and comments made by the public at the review board meeting in deciding whether to issue a certificate.

(e) The review board may grant, condition, or deny an application for a certificate.

(Natural Resources Commission; 312 IAC 20-4-13; filed Dec 10, 2010, 10:40 a.m.: 20110105-IR-312100042FRA)

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