ARTICLE 20. HISTORIC PRESERVATION REVIEW BOARD

Rule 1. Application and Administration

312 IAC 20-1-1 Applicability of review board article

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

Sec. 1. This article governs the functions of the review board. *(Natural Resources Commission; 312 IAC 20-1-1; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

312 IAC 20-1-2 Agency determinations and administrative review

Authority: IC 14-21-1-31
Affected: IC 4-21.5; IC 14-9; IC 14-21-1

Sec. 2. (a) Unless otherwise specified in this title, the review board (or a delegate of the review board) makes the initial determination for any license, sanction, or other order that is subject to IC 4-21.5.

(b) The mailing address for the review board is the division of historic preservation and archaeology. The address for the division is as follows:

Division of Historic Preservation and Archaeology
Department of Natural Resources
Indiana Government Center-South
402 West Washington Street, Room W274
Indianapolis, Indiana 46204.

(c) The commission is the ultimate authority under this article. A request to the commission for administrative review of an initial determination under subsection (b) must be addressed as follows:

Division of Hearings
Natural Resources Commission
Indiana Government Center-South
402 West Washington Street, Room W272
Indianapolis, Indiana 46204.

(Natural Resources Commission; 312 IAC 20-1-2; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

Rule 2. Definitions

312 IAC 20-2-1 Applicability

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

Sec. 1. The definitions in this rule are in addition to those in IC 14 and 312 IAC 1 and apply throughout this article. *(Natural Resources Commission; 312 IAC 20-2-1; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

312 IAC 20-2-1.7 "Certificate" defined

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

Sec. 1.7. "Certificate" refers to a certificate of approval under IC 14-21-1-18. *(Natural Resources Commission; 312 IAC 20-2-1.7; filed Sep 18, 2003, 5:30 p.m.: 27 IR 454, eff Dec 1, 2003; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-*

312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 20-2-2 "Chair" defined
Authority: IC 14-21-1-31
Affected: IC 14-9-1-1; IC 14-9-4-1; IC 14-21-1

Sec. 2. "Chair" means the chair of the review board. *(Natural Resources Commission; 312 IAC 20-2-2; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

312 IAC 20-2-3 "Division" defined
Authority: IC 14-21-1-31
Affected: IC 14-9-1-1; IC 14-9-4-1

Sec. 3. "Division" refers to the division of historic preservation and archaeology established by IC 14-21-1-6 *[IC 14-21-1-6 was repealed by P.L.85-2008, SECTION 6, effective July 1, 2008.]*. *(Natural Resources Commission; 312 IAC 20-2-3; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

312 IAC 20-2-4 "Division director" defined
Authority: IC 14-21-1-31
Affected: IC 14-9-1-1; IC 14-9-4-1; IC 14-21

Sec. 4. "Division director" means the director of the division. *(Natural Resources Commission; 312 IAC 20-2-4; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

312 IAC 20-2-4.3 "Indiana register" defined
Authority: IC 14-21-1-31
Affected: IC 14-9; IC 14-21-1-9

Sec. 4.3. "Indiana register" means the Indiana register of historic sites and historic structures established under IC 14-21-1-9. *(Natural Resources Commission; 312 IAC 20-2-4.3; filed Sep 18, 2003, 5:30 p.m.: 27 IR 454, eff Dec 1, 2003; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

312 IAC 20-2-4.7 "National Register" defined
Authority: IC 14-21-1-31
Affected: IC 14-9; IC 14-21-1-15

Sec. 4.7. "National Register" means the National Register of Historic Places established under 16 U.S.C. 470 et seq. and identified at IC 14-21-1-15. *(Natural Resources Commission; 312 IAC 20-2-4.7; filed Sep 18, 2003, 5:30 p.m.: 27 IR 454, eff Dec 1, 2003; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

312 IAC 20-2-5 "Review board" defined
Authority: IC 14-21-1-31
Affected: IC 14-9-1-1; IC 14-9-4-1; IC 14-21-1

Sec. 5. "Review board" means the historic preservation review board as established by IC 14-21-1. *(Natural Resources*

Commission; 312 IAC 20-2-5; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3399; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 20-2-6 "State historic preservation officer" or "SHPO" defined

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

Sec. 6. "State historic preservation officer" or "SHPO" means the director of the department. *(Natural Resources Commission; 312 IAC 20-2-6; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3400; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

Rule 3. Membership and Meetings

312 IAC 20-3-1 Membership

Authority: IC 14-21-1-31
Affected: IC 14-21-1-20

Sec. 1. (a) The review board shall be appointed as provided in IC 14-21-1-20.

(b) If a vacancy occurs in the review board, the SHPO shall appoint a successor to serve for the remainder of the vacated term.

(c) At the end of the term of a member, the SHPO may reappoint the person whose term has expired or appoint a new member of a full three (3) year term.

(d) The staggered terms established under 310 IAC 10-1-3, before its repeal, shall continue in the same sequence under this section. *(Natural Resources Commission; 312 IAC 20-3-1; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3400; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

312 IAC 20-3-2 Officers

Authority: IC 14-21-1-31
Affected: IC 14-21-1

Sec. 2. (a) The state historic preservation officer is the chair of the review board.

(b) The review board shall elect officers, other than the chair, from the membership of the review board during the first meeting of a calendar year. The descriptions and designations of these officers are as determined by the review board. *(Natural Resources Commission; 312 IAC 20-3-2; filed Jun 21, 2001, 3:06 p.m.: 24 IR 3400; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

312 IAC 20-3-3 Submission of application before review board meeting

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

Sec. 3. (a) A person who seeks a certificate must file a completed application, on a division form, at least forty (40) days before the meeting of the review board during which the application is to be considered.

(b) The completed application and any analysis and recommendations by the division shall be mailed to members of the review board at least five (5) working days before the meeting. *(Natural Resources Commission; 312 IAC 20-3-3; filed Sep 18, 2003, 5:30 p.m.: 27 IR 454, eff Dec 1, 2003; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

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; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

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; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

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; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

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; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

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; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

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; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

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; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

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; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

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; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

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; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

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; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 20-4-11.5 Dual review proposals

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

Sec. 11.5. (a) This section governs a proposal that requires review by the division potentially under both 16 U.S.C. 470f and IC 14-21-1-18.

(b) A person may submit a proposal to the division for a project that is subject to review by the division under 16 U.S.C. 470f and IC 14-21-1-18.

(c) A person that wishes to make a submission under this section must provide a transmittal letter to the division with "Dual Review Project" in the subject line.

(d) Upon receipt of a transmittal letter, the division shall conduct a review that satisfies both:

(1) 16 U.S.C. 470f and 36 CFR 800; and

(2) IC 14-21-1-18 and this rule.

(e) As soon as practicable, the division shall acknowledge to the person its receipt of the transmittal letter. The acknowledgment shall state the division would review the information submitted under the authorities referenced in subsection (d). In addition to any notification required under 16 U.S.C. 470f and 36 CFR 800, the division shall provide notification of the dual review to the following:

(1) Interested persons.

(2) Members of the review board.

(3) By posting on the division's website.

(f) If a submission under this section results in a finding under 36 CFR 800 of no historic properties affected or no adverse effect on historic properties, and the Indiana state historic preservation officer concurs in the finding, the division director shall issue a letter of clearance for the project under this rule.

(g) If a submission under this section results in a finding of adverse effect on historic properties under 36 CFR 800, and a memorandum of agreement is executed under 36 CFR 800, the division director shall consider the terms of the memorandum of agreement. If the division director concludes the objectives and purposes of IC 14-21-1-18 have been achieved, the division director shall issue a letter of clearance under this rule and exempt the person from obtaining a certificate of approval under IC 14-21-1-18 concurrently with the execution of the memorandum of agreement. In addition to any remedy under 16 U.S.C. 470 and 36 CFR 800, the department may initiate an enforcement action under IC 14 to achieve compliance with the memorandum of agreement.

(h) If a dual review initiated under this section results in a finding of adverse effect on historic properties under 36 CFR 800, but a memorandum of agreement is not executed, the person making the submission shall obtain a certificate of approval regarding the project from the review board under section 13 of this rule before taking action that would alter the historic significance or character of the site.

(i) If the Indiana department of transportation makes a submission for a project involving a bridge covered by the July 17, 2006 "Programmatic Agreement Among the Federal Highway Administration, the Indiana Department of Transportation, the Indiana State Historic Preservation Office, and the Advisory Council for Historic Preservation Regarding the Management and Preservation of Indiana's Historic Bridges", and a finding of adverse effect on historic properties results under 36 CFR 800, the division director shall consider the mitigations prescribed for the adverse effects under the Programmatic Agreement. If the division director concludes the objectives and purposes of IC 14-21-1-18 are achieved, the division director shall issue a letter of clearance under this rule and exempt the person from obtaining a certificate of approval under IC 14-21-1-18. *(Natural Resources Commission; 312 IAC 20-4-11.5; filed Aug 14, 2013, 2:12 p.m.: 20130911-IR-312130003FRA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

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; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

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; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

Rule 5. Indiana Register

312 IAC 20-5-1 Applicability of rule for Indiana register of historic sites and structures

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

Sec. 1. This rule governs matters pertaining to the register of Indiana historic sites and historic structures established under IC 14-21-1-9. *(Natural Resources Commission; 312 IAC 20-5-1; filed Sep 19, 2003, 8:17 a.m.: 27 IR 452; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

312 IAC 20-5-2 Criteria for eligibility on the register

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

Sec. 2. A site, district, building, structure, or object is eligible for inclusion in the Indiana register if it does each of the following:

(1) Possesses local, state, or national significance in Indiana history, architecture, archaeology, engineering, or culture.

(2) Demonstrates sufficient integrity of location, setting, design, workmanship, and materials. Feeling and association are factors that may be considered.

(3) Satisfies at least one (1) of the following:

(A) Is associated with events who have made a significant contribution to national, state, or local history.

(B) Is associated with individuals who have made significant contribution to the nation, state, or local community.

(C) Embodies distinctive characteristics of a type, period, or method of construction.

(D) Represents the work of a master.

(E) Possesses high artistic values.

(F) Has yielded, or will likely yield, information important in the archaeological knowledge of the prehistory or history of the state or nation.

(Natural Resources Commission; 312 IAC 20-5-2; filed Sep 19, 2003, 8:17 a.m.: 27 IR 452; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 20-5-3 Eligibility exemptions

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

Sec. 3. (a) Except as provided in subsection (b), a structure or site cannot be included in the Indiana register if the structure is any of the following:

(1) Moved from its original location.

(2) A reconstructed historic building.

(3) Primarily commemorative in nature.

(4) An archaeological site where the contextual integrity is significantly altered.

(5) A structure or site where the significance was achieved within the past fifty (50) years.

(b) A structure or site otherwise disqualified under subsection (a) may be included in the Indiana register if it is either of the following:

(1) An integral part of a district that meets the criteria described in section 2 of this rule.

(2) Falls into at least one (1) of the following categories:

(A) A building or structure removed from its original location but that is a rare surviving resource associated with an historical person or event.

(B) A reconstructed building that is accurately executed in a suitable environment and presented in a dignified manner.

(C) A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its

own historical significance.

(D) A property that has achieved significance within the past fifty (50) years if it is of exceptional significance in the historic, architectural, archaeological, or cultural development of the state or nation.

(E) An archaeological site where the contextual integrity has been altered by natural forces or human activity but which may yield pertinent or quality cultural, biological, fauna, and floral data regarding cultural patterns, processes, or activities significant in our past.

(Natural Resources Commission; 312 IAC 20-5-3; filed Sep 19, 2003, 8:17 a.m.: 27 IR 453; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)

312 IAC 20-5-4 Listing and removal of properties from the Indiana register

Authority: IC 14-21-1-31
Affected: IC 4-21.5; IC 14-9; IC 14-21-1-17

Sec. 4. (a) Additions and removals from the Indiana register are governed by IC 14-21-1-17, 312 IAC 2-3-1, and this section.

(b) The Indiana register includes any site listed by the board:

(1) on the effective date of this rule; or

(2) under this section.

(c) A property included on the National Register after the effective date of this rule is also automatically listed on the Indiana register unless:

(1) the board or division otherwise specifies; or

(2) the listing is made unilaterally by the federal government without approval by the board.

(d) This subsection governs petitions to list a property on the Indiana register, including the following:

(1) A person may, in writing, petition the division to list a site on the Indiana register. The petition must include adequate photographic and written documentation to support listing, including the significance of the property and its current physical condition.

(2) If the division determines the property meets the minimum criteria for listing, the division will issue a letter to indicate the property is being considered for listing and providing at least thirty (30) days for comment or objections to the following persons:

(A) The property owner.

(B) The chief elected official.

(C) The board of county commissioners.

(D) Any other person who requests notification.

(3) If an objection is not received within the comment period, without intervention of the board, the division shall list the property on the Indiana register and notify the persons described in subdivision (2).

(4) If timely objections are received, a designated member or members of the board will conduct a hearing under 312 IAC 2-3-1 to consider the objections. The board shall consider the recommendations of any hearing officer before determining whether to list the property.

(e) A property may be removed from the Indiana register if it either:

(1) ceases to demonstrate the characteristics that originally made the property eligible for the Indiana register; or

(2) was listed as a result of a procedural error during the listing process.

(f) Administrative review of a determination under subsection (b) is governed by IC 4-21.5 and 312 IAC 3-1. *(Natural Resources Commission; 312 IAC 20-5-4; filed Sep 19, 2003, 8:17 a.m.: 27 IR 453; readopted filed May 29, 2007, 9:45 a.m.: 20070613-IR-312070140RFA; readopted filed Sep 19, 2013, 10:16 a.m.: 20131016-IR-312130184RFA)*

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